

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) APRIL 20, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 20
 DEFENDANT.)
) PAGES 3163 - 3450
) **SEALED PAGES 3222 - 3233**

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTERS:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074
LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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BY: JEFFREY COOPERSMITH
AARON BRECHER
AMANDA MCDOWELL
701 FIFTH AVENUE, SUITE 5600
SEATTLE, WASHINGTON 98104

BY: AMY WALSH
51 W 52ND STREET
NEW YORK, NEW YORK 10019

ORRICK, HERRINGTON & SUTCLIFFE
JENNIFER CYGNOR, PARALEGAL
REESE ONATE

UNITED STATES POSTAL INSPECTION SERVICE
BY: CHRISTOPHER MCCOLLOWS

UNITED STATES FOOD & DRUG
ADMINISTRATION
BY: GEORGE SCAVDIS

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1 SAN JOSE, CALIFORNIA

APRIL 20, 2022

08:36AM 2 P R O C E E D I N G S

08:36AM 3 (COURT CONVENED AT 8:36 A.M.)

08:36AM 4 (JURY OUT AT 8:36 A.M.)

08:36AM 5 THE COURT: THANK YOU. GOOD MORNING. THANK YOU FOR
08:36AM 6 YOUR COURTESY.

08:36AM 7 WE'RE ON THE RECORD.

08:36AM 8 ALL COUNSEL ARE PRESENT.

08:36AM 9 DEFENSE COUNSEL IS PRESENT. THE DEFENDANT IS PRESENT.

08:36AM 10 WE'RE OUTSIDE OF THE PRESENCE OF THE JURY TO TALK ABOUT A
08:36AM 11 COUPLE OF MATTERS.

08:37AM 12 FIRST OF ALL, JUROR NUMBER 8, WE RECEIVED A -- I THINK WE
08:37AM 13 RECEIVED AN EMAIL FROM HIM, A TEXT FROM HIM, OUR CLERK DID,
08:37AM 14 INDICATING THAT I BELIEVE HE HAS A MEDICAL APPOINTMENT TODAY AT
08:37AM 15 3:00.

08:37AM 16 IS THAT RIGHT?

08:37AM 17 THE CLERK: YES.

08:37AM 18 THE COURT: SO HE TOLD US YESTERDAY THAT HE WAS
08:37AM 19 SEEKING AN APPOINTMENT. APPARENTLY IT'S AT 3:00 TODAY.

08:37AM 20 TIMING-WISE, WE'D PROBABLY HAVE TO BREAK EARLY, WOULDN'T
08:37AM 21 WE? I DON'T KNOW WHERE THE DOCTOR IS, BUT TO ALLOW HIM TO GET
08:37AM 22 THERE.

08:37AM 23 I EXPECT TO BRING HIM IN TODAY AND CONTINUE OUR
08:37AM 24 CONVERSATION WITH HIM ABOUT HIS THOUGHTS AND -- ANY THOUGHTS
08:37AM 25 JUST IMMEDIATELY FROM ANY OF YOU ABOUT WHAT WE SHOULD DO?

08:38AM 1 MR. SCHENK: THANK YOU, YOUR HONOR.

08:38AM 2 OUR UNDERSTANDING IS THAT WE NEED TO BREAK AT 2:15 OR
08:38AM 3 THEREABOUTS TODAY TO ALLOW JUROR NUMBER 8 SUFFICIENT TIME TO
08:38AM 4 GET TO THIS APPOINTMENT.

08:38AM 5 WE RECEIVED AN EMAIL LAST NIGHT FROM THE DEFENSE
08:38AM 6 INDICATING THAT THEY OPPOSE EXCUSING JUROR NUMBER 8 AT THIS
08:38AM 7 POINT, AND I WONDER IF WE SHOULD GIVE THE DEFENSE AN
08:38AM 8 OPPORTUNITY TO FURTHER EXPAND THE RECORD ON THEIR VIEWS ON
08:38AM 9 THAT.

08:38AM 10 THE COURT: MR. COOPERSMITH.

08:38AM 11 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

08:38AM 12 IT MIGHT BE THAT ULTIMATELY THIS JUROR WILL HAVE TO BE
08:38AM 13 EXCUSED DEPENDING ON HIS SITUATION, UNFORTUNATE SITUATION.

08:38AM 14 AT THIS POINT MY UNDERSTANDING, IF I HAVE ALL OF THE
08:38AM 15 FACTS, IS THAT HE HAS A MEDICAL APPOINTMENT TODAY AT 3:00. AS
08:38AM 16 MR. SCHENK SAID. HE WOULD HAVE TO LEAVE AT 2:15.

08:38AM 17 UNFORTUNATELY, THAT WOULD MEAN BREAKING EARLY, BUT I DON'T
08:38AM 18 THINK THAT'S A REASON TO DISMISS THE JUROR AT THIS POINT.

08:38AM 19 HE MIGHT GET GOOD NEWS. WE CERTAINLY ALL HOPE THAT FOR
08:38AM 20 HIM.

08:38AM 21 BUT IF NOT, AND IT TURNS OUT THAT THIS IS GOING TO BE A
08:39AM 22 DISTRACTION OR IT'S GOING TO BE IMPOSSIBLE FOR HIM TO SERVE
08:39AM 23 BECAUSE HE'S GOING TO BE SWAMPED WITH MEDICAL APPOINTMENTS AND
08:39AM 24 THAT'S WHAT HE'S GOING TO BE DOING, THEN IT MIGHT BE THAT WE'LL
08:39AM 25 HAVE TO REACH THAT POINT TO EXCUSE HIM.

08:39AM 1 BUT I JUST DON'T THINK THAT WE'RE AT THAT POINT NOW.

08:39AM 2 THAT'S THE REASON FOR THE EMAIL THAT MR. SCHENK MENTIONED.

08:39AM 3 THE COURT: SURE. OKAY.

08:39AM 4 WELL, WE'LL BRING HIM IN AND TALK ABOUT IT, AND I'M BEING
08:39AM 5 CAREFUL TO TALK ABOUT -- THIS ISN'T SEALED YET, AND I DON'T SEE
08:39AM 6 ANY MEMBERS OF THE PUBLIC PRESENT, ALTHOUGH THE COURTROOM IS
08:39AM 7 OPEN.

08:39AM 8 I THINK IT WAS JUST HIM TELLING US ABOUT HIS RECENT
08:39AM 9 MEDICAL HISTORY ABOUT GETTING THE TEST, AND THEN BEING, I DON'T
08:39AM 10 WANT TO SAY IMMEDIATELY, BUT REFERRED TO A SPECIALIST CAUSES
08:39AM 11 SOME CONCERN.

08:39AM 12 GENTLEMEN, IF THAT HAPPENED TO US, WE WOULD BE CONCERNED.

08:39AM 13 MR. COOPERSMITH: OF COURSE.

08:39AM 14 THE COURT: SO THAT RAISES SOME, SOME LEVEL OF
08:39AM 15 CONCERN.

08:39AM 16 AND I KNOW YOU BOTH HAD A COLLOQUY WITH HIM YESTERDAY
08:39AM 17 ABOUT HIS ABILITY TO TRACK AND PAY ATTENTION.

08:40AM 18 I THOUGHT WE WOULD ENGAGE A CONVERSATION WITH HIM THIS
08:40AM 19 MORNING JUST TO BETTER INFORM US, AND THEN WE'LL SEE, WE'LL SEE
08:40AM 20 WHAT WE DO.

08:40AM 21 DOES THAT MAKE SENSE? AND THEN WE'LL -- HOPEFULLY WE CAN
08:40AM 22 DO THIS BEFORE 9:00 O'CLOCK BEFORE WE GET STARTED.

08:40AM 23 IF HE'S GOING TO STAY, THEN TIME IS ALWAYS PRECIOUS, SO WE
08:40AM 24 WANT TO STAY TIMELY IF WE CAN.

08:40AM 25 MR. COOPERSMITH: YES, ABSOLUTELY, YOUR HONOR.

08:40AM 1 THE ONLY THING I WOULD SAY IS, WE'LL SEE. BUT HE MAY NOT
08:40AM 2 HAVE MORE INFORMATION THAN HE DID WHEN WE ENGAGED HIM YESTERDAY
08:40AM 3 AT 4:00 O'CLOCK.

08:40AM 4 IT SOUNDS LIKE HE MAY HAVE MORE INFORMATION AFTER HIS
08:40AM 5 APPOINTMENT.

08:40AM 6 THE COURT: OH, FOR SURE.

08:40AM 7 MR. COOPERSMITH: AND UNFORTUNATELY HE MISSED A CALL
08:40AM 8 FROM HIS PHYSICIAN'S OFFICE.

08:40AM 9 AND THEN WE ARE NOT IN SESSION TOMORROW, SO IT SEEMS LIKE
08:40AM 10 THERE WOULD BE TIME AFTER TODAY TO SORT THIS OUT WITH HIM WHEN
08:40AM 11 HE HAS MORE INFORMATION.

08:40AM 12 BUT ABSOLUTELY, IF HE HAS MORE TO SAY TODAY, THEN WE WOULD
08:40AM 13 BE GOOD TO GO.

08:40AM 14 THE COURT: I DON'T THINK WE'LL GET ANY ADDITIONAL
08:40AM 15 MEDICAL INFORMATION TODAY.

08:41AM 16 I THINK WHAT I WAS TALKING ABOUT WAS HIS PERSONAL PSYCHIC
08:41AM 17 INFORMATION ABOUT HIS EMOTIONS AND HOW HE'S FEELING AND
08:41AM 18 PROCESSING THIS.

08:41AM 19 MR. COOPERSMITH: I WOULD IMAGINE HE'S PRETTY
08:41AM 20 STRESSED OUT UNTIL HE GETS THE NEWS, YOU KNOW, ONE WAY OR THE
08:41AM 21 OTHER.

08:41AM 22 AND IF IT'S BAD NEWS, AT LEAST HE'LL KNOW WHAT HE'S
08:41AM 23 DEALING WITH AT THIS POINT.

08:41AM 24 SO THIS IS PROBABLY THE MOST STRESSFUL TIME, I WOULD
08:41AM 25 IMAGINE.

08:41AM 1 THE COURT: YEAH, I WOULD THINK SO. YEAH, NOT
08:41AM 2 KNOWING.

08:41AM 3 AND THEN THE SECOND ISSUE -- ANYTHING FURTHER ON THAT?

08:41AM 4 MR. SCHENK: NO, YOUR HONOR.

08:41AM 5 MR. COOPERSMITH: NO, YOUR HONOR.

08:41AM 6 THE COURT: AND THEN THE SECOND ISSUE IS
08:41AM 7 DR. ROSENDORFF AND HIS HEALTH. DID HE TEST TODAY? DO WE HAVE
08:41AM 8 INFORMATION ABOUT THAT?

08:41AM 9 MR. BOSTIC: GOOD MORNING, YOUR HONOR.

08:41AM 10 THE COURT: GOOD MORNING.

08:41AM 11 MR. BOSTIC: SO SINCE WE SPOKE YESTERDAY AFTERNOON,
08:41AM 12 MY UNDERSTANDING IS THAT DR. ROSENDORFF HAS CONTINUED TO BE
08:41AM 13 ASYMPTOMATIC. HE'S FEELING FINE.

08:41AM 14 I'M AWARE THAT HE TESTED YESTERDAY EVENING, LAST NIGHT,
08:41AM 15 AND RECEIVED A NEGATIVE RESULT.

08:41AM 16 I BELIEVE HE'S ARRIVING AT THE COURTHOUSE NOW, OR HE MIGHT
08:41AM 17 HAVE ARRIVED ACTUALLY A MINUTE OR TWO AGO, SO WE COULD ASK HIM.

08:42AM 18 BUT I REQUESTED TO BE INFORMED OF ANY UNFAVORABLE CHANGES
08:42AM 19 IN HIS CONDITION, AND I HAVEN'T GOTTEN ANY BAD NEWS.

08:42AM 20 THE COURT: OKAY. DOES IT MAKE SENSE TO HAVE HIM
08:42AM 21 TEST THIS MORNING, OR DOES THAT MATTER?

08:42AM 22 SHOULD WE TALK TO DR. SCHENK ABOUT THAT?

08:42AM 23 (LAUGHTER.)

08:42AM 24 THE COURT: DOES IT MATTER IF HE TESTED NEGATIVE
08:42AM 25 LAST NIGHT? IS IT LIKELY TO BE A CHANGE IF HE TESTED THIS

08:42AM 1 MORNING?

08:42AM 2 MR. BOSTIC: HE MAY HAVE TESTED THIS MORNING ON HIS
08:42AM 3 OWN, YOUR HONOR. I JUST DON'T KNOW. I HAVEN'T BEEN IN TOUCH
08:42AM 4 WITH HIM THIS MORNING.

08:42AM 5 THE COURT: ALL RIGHT.

08:42AM 6 MR. BOSTIC: SO THAT MIGHT BE A QUESTION TO ASK HIM
08:42AM 7 IF HE'S AVAILABLE, AND I MIGHT STEP OUTSIDE AND SEE IF I CAN
08:42AM 8 FIND OUT THAT INFORMATION NOW.

08:42AM 9 THE COURT: MAYBE MR. SCHENK.

08:42AM 10 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

08:42AM 11 MR. BOSTIC: I THINK AN AGENT IS ASKING HIM THAT
08:42AM 12 QUESTION AT THE MOMENT.

08:42AM 13 THE COURT: GREAT. OKAY.

08:42AM 14 THAT WILL BETTER INFORM US AS TO WHAT WE SHOULD DO.

08:43AM 15 AND THEN I THOUGHT LAST NIGHT ABOUT, DO WE INFORM THE JURY
08:43AM 16 ABOUT HIS SITUATION?

08:43AM 17 AND I'M NOT CERTAIN THAT'S NECESSARY, BUT I'M HAPPY TO
08:43AM 18 HEAR, YOU KNOW, AND RECEIVE YOUR THOUGHTS AND GUIDANCE ON THAT.

08:43AM 19 MR. BOSTIC: SO I THINK WE'LL END UP DEFERRING TO
08:43AM 20 THE COURT ON THAT, YOUR HONOR.

08:43AM 21 THAT'S AN EASY ANSWER FOR ME TO GIVE.

08:43AM 22 I'LL NOTE THAT WE TALKED YESTERDAY ABOUT BUILDING
08:43AM 23 MANAGEMENT INFORMING US WHEN THERE HAD BEEN A CONFIRMED CASE OF
08:43AM 24 COVID IN THE BUILDING, WE GET THOSE EMAILS.

08:43AM 25 THE COURT: RIGHT. RIGHT.

08:43AM 1 MR. BOSTIC: TWO THINGS I NOTED ABOUT THOSE
08:43AM 2 SITUATIONS. ONE, THOSE EMAILS ARE ANONYMOUS. THEY DON'T
08:43AM 3 IDENTIFY THE PERSON WHO TESTED POSITIVE; AND MORE IMPORTANTLY,
08:43AM 4 THEY'RE ONLY SENT OUT WHEN SOMEONE IS IN THE BUILDING WHO
08:43AM 5 ACTUALLY HAS A CONFIRMED CASE.

08:43AM 6 THE COURT: RIGHT.

08:43AM 7 MR. BOSTIC: THEY'RE NOT SENT OUT WHEN SOMEONE
08:43AM 8 THINKS THEY MAY HAVE BEEN AROUND SOMEONE WHO TESTED POSITIVE.

08:43AM 9 I THINK THE COURT OBSERVED YESTERDAY CORRECTLY THAT IN OUR
08:44AM 10 DAY-TO-DAY LIVES, THE PANDEMIC IS HEADING IN THE RIGHT
08:44AM 11 DIRECTION, BUT IT'S STILL PRESENT TO A DEGREE THAT MANY PEOPLE
08:44AM 12 IN THE COURTROOM, OR SEVERAL PEOPLE IN THE COURTROOM ON ANY
08:44AM 13 GIVEN DAY MAY HAVE BEEN IN CONTACT WITH SOMEONE WHO ENDED UP
08:44AM 14 HAVING COVID AT SOME POINT IN THE RECENT PAST.

08:44AM 15 IT'S IMPOSSIBLE TO KNOW EVERY TIME THAT HAPPENS.

08:44AM 16 SO I DON'T THINK IT'S CLEARLY INCUMBENT ON THE COURT TO
08:44AM 17 INFORM THE JURY ABOUT IT.

08:44AM 18 THE COURT: MR. COOPERSMITH.

08:44AM 19 MR. COOPERSMITH: I DON'T HAVE STRONG VIEWS THAT THE
08:44AM 20 COURT SHOULD INFORM THE JURY. HE'S ASYMPTOMATIC, HE'S TESTED
08:44AM 21 NEGATIVE. HE SAYS HE'S FEELING OKAY APPARENTLY.

08:44AM 22 OBVIOUSLY, WE'LL ALL REGRET THAT IF IT TURNS OUT HE HAS
08:44AM 23 COVID IN A COUPLE OF DAYS, BUT I DON'T HAVE ANY MORE TO ADD
08:44AM 24 THAT WHAT MR. BOSTIC SAID.

08:44AM 25 THE COURT: WHAT ABOUT, MR. BOSTIC, WE WILL FACE

08:44AM 1 THIS FIRST QUESTION AFTER THE COURT INTRODUCES HIM AND ASKS HIM
08:44AM 2 TO STATE HIS NAME AND MR. BOSTIC IS GOING TO SAY, THE COURT HAS
08:45AM 3 GIVEN HIM PERMISSION, IF YOU'VE TESTED, TO REMOVE YOUR MASK.

08:45AM 4 MR. COOPERSMITH: RIGHT.

08:45AM 5 THE COURT: ANY OBJECTION TO HIM TAKING HIS MASK
08:45AM 6 OFF, OR WHAT ARE YOUR THOUGHTS ON THAT?

08:45AM 7 MR. COOPERSMITH: I DON'T HAVE ANY OBJECTION TO HIM
08:45AM 8 TAKING HIS MASK OFF.

08:45AM 9 AS YOU SAID, THE WAY THE WORLD IS NOW, WE'RE PROBABLY ALL
08:45AM 10 EXPOSED ALL OF THE TIME, AND I'M PRETTY FAR AWAY.

08:45AM 11 BUT THAT SAID, APART FROM MY PERSONAL DISTANCE, HE -- I'M
08:45AM 12 COMFORTABLE WITH IT.

08:45AM 13 OBVIOUSLY WE'RE MAKING DECISIONS FOR OTHER PEOPLE, AND
08:45AM 14 THAT'S THE PROBLEM.

08:45AM 15 BUT WHAT I WOULD NOT WANT TO SEE IS HIM TESTIFYING IN A
08:45AM 16 MASK. I THINK THAT'S --

08:45AM 17 THE COURT: THAT'S THE NEXT QUESTION.

08:45AM 18 MR. COOPERSMITH: RIGHT. YEAH.

08:45AM 19 THE COURT: THAT'S THE NEXT QUESTION. SHOULD HE
08:45AM 20 TESTIFY WITH A MASK, OR SHOULD HE TESTIFY WITH A CLEAR, A CLEAR
08:45AM 21 SHIELD, WHICH WE'VE DONE?

08:45AM 22 MR. COOPERSMITH: YEAH, WE, WE -- IF THE COURT'S
08:45AM 23 JUDGMENT IS THAT HE SHOULD WEAR A MASK, WE WOULD BE OKAY WITH A
08:45AM 24 CLEAR SHIELD.

08:45AM 25 WE WOULDN'T WANT A MASK THAT HIDES HIS FACE.

08:46AM 1 THE COURT: SURE. I UNDERSTAND.

08:46AM 2 MR. BOSTIC: I DON'T HAVE A POSITION ON THAT,

08:46AM 3 YOUR HONOR.

08:46AM 4 THE COURTS -- THE WAY WE'VE BEEN ASKING THOSE QUESTIONS OF
08:46AM 5 WITNESSES AND THE POLICY HAS BEEN IF THE WITNESS IS FULLY
08:46AM 6 VACCINATED, THEY MAY TESTIFY WITHOUT A MASK.

08:46AM 7 DR. ROSENDORFF IS FULLY VACCINATED.

08:46AM 8 WE HAVEN'T BEEN ASKING WITNESSES ABOUT EXPOSURE OR
08:46AM 9 POSSIBLE EXPOSURE. THAT HASN'T BEEN A CONDITION.

08:46AM 10 THE GOVERNMENT WOULD NOT OPPOSE DR. ROSENDORFF TESTIFYING
08:46AM 11 BEHIND A FACE SHIELD, A CLEAR SHIELD.

08:46AM 12 I'LL NOTE THAT THOSE DO CREATE SOME ISSUES SOMETIMES WITH
08:46AM 13 THE MICROPHONE PICKING UP THE AUDIO.

08:46AM 14 THE COURT: THEY DO. AND WE DO HAVE THE PLEXIGLASS
08:46AM 15 SHIELDS UP SURROUNDING THE WITNESS, AND AS WELL AS THE BENCH,
08:46AM 16 AND YOU HAVE SOME MODIFIED THERE.

08:46AM 17 WE HAVE A -- I THINK WE HAVE A FAN UNDERNEATH.

08:46AM 18 DO WE HAVE THE AIR PURIFIER UNDER THE WITNESS? HAS THAT
08:46AM 19 BEEN ON DURING TESTIMONY?

08:46AM 20 WE'LL TURN IT ON DURING HIS TESTIMONY AT A MINIMUM.

08:46AM 21 CAN WE TRY IT NOW JUST SO WE GET AN IDEA OF THE NOISE
08:47AM 22 LEVEL AND WHETHER MS. RODRIGUEZ WILL BE INTERFERED.

08:47AM 23 (PAUSE IN PROCEEDINGS.)

08:48AM 24 THE COURT: OKAY. SO AT A MINIMUM, WE'LL KEEP THE
08:48AM 25 FAN ON AT THE WITNESS STAND, AND I THINK HE CAN KEEP HIS MASK

08:48AM 1 OFF.

08:48AM 2 MR. BOSTIC: UNDERSTOOD, YOUR HONOR.

08:48AM 3 THE COURT: AND I DON'T THINK WE NEED TO NOTIFY
08:48AM 4 ANYONE ABOUT THAT, ALTHOUGH HE'LL BE ON ALL DAY.

08:48AM 5 YOU HEARD ME TALK ABOUT AIR CIRCULATES IN THIS COURTROOM
08:48AM 6 EVERY TEN MINUTES, SO --

08:48AM 7 MR. BOSTIC: I THINK THAT'S A GOOD THING, CORRECT,
08:48AM 8 YOUR HONOR, THE DEGREE OF CIRCULATION.

08:48AM 9 THE COURT: RIGHT. RIGHT.

08:48AM 10 MR. BOSTIC: I'M INFORMED THAT DR. ROSENDORFF HAS
08:48AM 11 NOT TAKEN A TEST THIS MORNING. I'M SURE HE'D BE WILLING TO.

08:48AM 12 THE COURT: OKAY. WELL, WE'LL PROVIDE HIM WITH ONE.
08:48AM 13 SURE, LET'S DO THAT. BECAUSE THAT'S A 10 MINUTE EVENT, I
08:48AM 14 THINK, OR 15.

08:49AM 15 LET ME -- CAN WE JUST GIVE THAT TO MR. SCHENK?

08:49AM 16 MR. BOSTIC: YES, THANK YOU.

08:49AM 17 THE CLERK: (HANDING.)

08:49AM 18 THE COURT: ANY OBJECTION TO THE COURT PROVIDING A
08:49AM 19 TEST FOR THIS WITNESS?

08:49AM 20 MR. COOPERSMITH: NO OBJECTION.

08:49AM 21 THE COURT: ALL RIGHT. ANYTHING ELSE BEFORE WE
08:49AM 22 BREAK OR BRING IN THE WITNESS?

08:49AM 23 MR. BOSTIC: NOT FROM THE GOVERNMENT, YOUR HONOR.

08:49AM 24 MR. COOPERSMITH: NO, YOUR HONOR.

08:49AM 25 IN A FEW MINUTES WE CAN PASS AROUND AND HAND UP THE

08:49AM 1 REVISED INSTRUCTION FROM YESTERDAY'S ARGUMENT --

08:49AM 2 THE COURT: OKAY.

08:49AM 3 MR. COOPERSMITH: -- FOR THE COURT TO CONSIDER, AND
08:49AM 4 THE COURT CAN LOOK AT THAT.

08:49AM 5 THE COURT: SO I WANT TO ASK -- THANK YOU.

08:49AM 6 I WANT TO ASK ANOTHER QUESTION. THE GOVERNMENT IS ABOUT
08:49AM 7 TO CALL THIS WITNESS, DR. ROSENDORFF, AND HE'S THE SUBJECT OF
08:49AM 8 THE OTHER MOTION REGARDING WHETHER OR NOT QUESTIONS SHOULD BE
08:50AM 9 POSED TO HIM REGARDING HIS POST-THERANOS EMPLOYMENT.

08:50AM 10 AND I'M -- I WAS THINKING ABOUT THIS. WE SAID LAST NIGHT
08:50AM 11 WE WILL PUT IT OVER UNTIL FRIDAY BECAUSE THAT'S WHEN IT IS
08:50AM 12 ANTICIPATED YOU WOULD BE IN CROSS, OR HE'D BE AVAILABLE FOR
08:50AM 13 CROSS.

08:50AM 14 BUT AS I THINK ABOUT IT, PERHAPS WE SHOULD DISCUSS THIS
08:50AM 15 NOW. THE GOVERNMENT IS GOING TO INQUIRE OF HIM, AND I DON'T
08:50AM 16 KNOW IF A DECISION NOW WILL INFORM THE PARTIES, AT LEAST THE
08:50AM 17 GOVERNMENT, AS TO HOW YOUR DIRECT SHOULD BE ENGAGED AND AS TO
08:50AM 18 THE DEFENSE, PUTTING THE DEFENSE ON NOTICE AS TO ANY
08:50AM 19 OBJECTIONABLE QUESTIONS THAT THEY WANT TO RAISE DURING THE
08:50AM 20 DIRECT EXAMINATION.

08:50AM 21 IT JUST, IT SEEMS TO ME THAT MAYBE IT MADE SENSE TO TALK
08:50AM 22 ABOUT THIS A LITTLE BIT NOW, AT LEAST AS FAR AS WHETHER OR NOT
08:50AM 23 THE EXAMINATION WOULD BE PERMITTED FOR HIS POST-EMPLOYMENT PER
08:50AM 24 YOUR MOTION.

08:50AM 25 MR. COOPERSMITH: RIGHT. RIGHT.

08:50AM 1 YOUR HONOR, WE CAN ADDRESS IT NOW. I OBVIOUSLY DON'T KNOW
08:50AM 2 WHETHER THE COURT'S RULING ON THAT MOTION WILL IMPACT THE WAY
08:51AM 3 THE GOVERNMENT CONDUCTS ITS DIRECT.

08:51AM 4 I SUSPECT NOT, BUT OBVIOUSLY MR. BOSTIC CAN SPEAK TO THAT.
08:51AM 5 SO WE'RE HAPPY TO ADDRESS IT NOW OR FRIDAY.

08:51AM 6 BUT YOU'RE RIGHT, IF MR. BOSTIC THINKS IT'S NECESSARY TO
08:51AM 7 RESOLVE THAT NOW BEFORE HIS DIRECT, THEN WE CAN TAKE IT UP NOW
08:51AM 8 FOR SURE.

08:51AM 9 MR. BOSTIC: YOUR HONOR, THE ANSWER TO THAT IS I
08:51AM 10 THINK IF THE COURT RULES THE WAY THAT THE GOVERNMENT SUGGESTS,
08:51AM 11 WHICH IS THAT THIS SUBJECT MATTER IS OUTSIDE OF THE SCOPE OF
08:51AM 12 WHAT IS AT ISSUE IN THIS CASE, THAT IT'S EXCLUDABLE UNDER 403,
08:51AM 13 THAT IT THREATENS TO PULL US INTO NUMEROUS MINI TRIALS, IN THAT
08:51AM 14 CASE I DON'T THINK I WOULD NEED THAT ANSWER BEFORE DOING THE
08:51AM 15 DIRECT.

08:51AM 16 BUT IF THE DEFENSE IS GOING TO BE PERMITTED TO GO INTO ANY
08:51AM 17 OF THAT MATERIAL ON CROSS, IT WOULD BE HELPFUL TO KNOW FOR
08:51AM 18 PURPOSES OF MAPPING OUT THE DIRECT.

08:51AM 19 THE COURT: SURE. RIGHT.

08:51AM 20 WELL, I -- MAYBE WE SHOULD DISCUSS THIS. WE'VE GOT -- AND
08:52AM 21 I APOLOGIZE. WE'VE GOT ABOUT TEN MINUTES LEFT BEFORE 9:00, AND
08:52AM 22 WE STILL WANT TO TALK TO JUROR NUMBER 8.

08:52AM 23 BUT LET ME JUST GIVE YOU MY THOUGHTS ON THIS. WHEN I
08:52AM 24 LOOKED AT THE PLEADINGS, YOUR PLEADING AND THE MOTION,
08:52AM 25 MR. COOPERSMITH, AND I CAPTURED THE SENTIMENT, I THINK I DO,

08:52AM 1 YOU'LL HELP ME, WE HAVE A DIRECTOR WHO HAD ISSUES IN HIS
08:52AM 2 EMPLOYMENT WITH YOUR CLIENT'S EMPLOYER.

08:52AM 3 HIS SUBSEQUENT EMPLOYMENT, REGRETTABLY FOR HIM, OR FOR
08:52AM 4 WHATEVER REASON THERE HAVE BEEN ISSUES AT THREE OF THE LABS
08:52AM 5 THAT HE HAS BEEN EMPLOYED AT SUBSEQUENT TO HIS EMPLOYMENT WITH
08:52AM 6 YOUR CLIENT'S COMPANY.

08:52AM 7 AND AT THE LAST TRIAL, ONE OF THOSE INVESTIGATIONS, I'LL
08:52AM 8 CALL IT, THE STATE, WAS IT CMS, WAS LOOKING AT THE LAB, AND
08:52AM 9 THEY HAD ACTUALLY FILED DOCUMENTS SAYING THAT YOU'RE AT
08:52AM 10 SIGNIFICANT RISK --

08:52AM 11 IS THAT THE LANGUAGE?

08:53AM 12 MR. COOPERSMITH: IMMEDIATE JEOPARDY, YOUR HONOR.

08:53AM 13 THE COURT: YES, IMMEDIATE JEOPARDY, THANK YOU.

08:53AM 14 -- AND MADE FINDINGS, WHICH WE KNOW FROM THE HOLMES TRIAL,
08:53AM 15 AND THAT'S SIGNIFICANT. THAT'S WHAT I BELIEVE HAPPENED IN THIS
08:53AM 16 CASE.

08:53AM 17 AND THE COURT ALLOWED SOME INQUIRY BY DEFENSE IN THAT,
08:53AM 18 RECOGNIZING THAT THERE COULD BE SOME REASON FOR THE WITNESS TO
08:53AM 19 TESTIFY IN A WAY THAT PERHAPS -- BECAUSE THE CONCERN WAS THAT
08:53AM 20 THE SAME AGENCY'S INVESTIGATING HIM NOW, IF I REMEMBER THE
08:53AM 21 DEFENSE ARGUMENT, HE MIGHT, HIS TESTIMONY MIGHT BE SLANTED,
08:53AM 22 BIASED, OR SOMEHOW AFFECTED BY THE FACT THAT HIS TESTIMONY
08:53AM 23 COULD PERHAPS PUT HIM SIDEWAYS WITH HIS CURRENT INVESTIGATION.

08:53AM 24 WHAT I UNDERSTAND NOW IS, AND AFTER READING THE PLEADINGS,
08:53AM 25 IS THAT THAT ISSUE WAS RESOLVED. THAT IMMEDIATE JEOPARDY WAS

08:53AM 1 WITHDRAWN. IT TOOK SOME TIME TO DO IT, BUT I GUESS THAT'S THE
08:54AM 2 WAY GOVERNMENT AGENCIES WORK. THEY DID A COUPLE OF
08:54AM 3 INVESTIGATIONS. AS I UNDERSTAND IT, HE SENT LETTERS, THE CMS
08:54AM 4 PEOPLE REVIEWED THOSE LETTERS, DID NOT TAKE ACTION, AND THEN
08:54AM 5 THEY ACTUALLY MADE AN INSPECTION, AND THEN THEY WITHDREW THAT.

08:54AM 6 SO THAT ISSUE IS NO LONGER PRESENT.

08:54AM 7 THE ISSUES OF THE OTHER TWO -- SO IT DOESN'T APPEAR TO ME
08:54AM 8 THAT THAT BIAS ISSUE IS THERE.

08:54AM 9 THE ISSUE ABOUT THE OTHER COMPANIES, ONE OF THEM, WAS IT,
08:54AM 10 THAT HAD DIRECTORS, I THINK IT WAS UBIOME, U-B-I-O-M-E, HOWEVER
08:54AM 11 IT IS PRONOUNCED, TWO CEO'S WERE INDICTED THERE FOR BILLING
08:54AM 12 FRAUD.

08:54AM 13 AND I UNDERSTAND THAT, MR. COOPERSMITH, YOU SUGGEST THAT
08:54AM 14 THE INDICTMENT SUGGESTS LABORATORY ISSUES AND THINGS LIKE THAT,
08:54AM 15 BUT IT'S BILLING FRAUD.

08:54AM 16 AND DR. ROSENDORFF WAS NOT CHARGED IN THAT CASE.

08:55AM 17 THERE WAS ANOTHER, INVITAE, I-N-V-I-T-A-E, HE WAS THE LAB
08:55AM 18 DIRECTOR THERE FROM 2015 TO 2017, AND THERE WAS SOME
08:55AM 19 INVESTIGATION OF SOMETHING THERE.

08:55AM 20 BUT APPARENTLY THERE WAS, AT LEAST FROM MY READING OF THE
08:55AM 21 PLEADINGS, AND MAYBE YOU'LL CORRECT ME, THERE WERE -- IT
08:55AM 22 APPEARS THAT HE, DR. ROSENDORFF, WAS NOT A SUBJECT OF
08:55AM 23 INVESTIGATION THERE EITHER.

08:55AM 24 SO MY SENSE IS, FROM WHAT YOU'VE TOLD ME, THAT THE ISSUE
08:55AM 25 NOW IS NOT SO MUCH DIRECT BIAS, BUT REPUTATIONAL BIAS, I THINK

08:55AM 1 IS WHAT YOU SAID, AND IS THAT -- WHAT I'M TRYING TO DO IS TO
08:55AM 2 DETERMINE -- IT SEEMS TO ME THAT POST-EMPLOYMENT EVIDENCE, HE'S
08:56AM 3 BEEN A BAD DIRECTOR SINCE HE LEFT THERANOS IN NOVEMBER OF 2014,
08:56AM 4 HE WENT ON 2015 TO 2017 TO INVITAE, I THINK IT IS, HE WAS AT
08:56AM 5 UBIOME FOR A FEW MONTHS, AND THEN HE WENT TO PERKIN ELMER IN
08:56AM 6 JANUARY OF '21, I THINK, AND EACH ONE OF THOSE PLACES HAVE HAD
08:56AM 7 SOME KIND OF A HICCUP OR ISSUE, AND THE MOST SERIOUS BEING
08:56AM 8 FEDERAL INDICTMENTS AS TO THE TWO CEO'S REGARDING BILLING, AND
08:56AM 9 THAT SUGGESTS THAT, I SUPPOSE, THAT HE'S A BAD LAB DIRECTOR AND
08:56AM 10 THE JURY SHOULD MAKE A DECISION ON THAT.

08:56AM 11 THAT SEEMS TO BE CHARACTER EVIDENCE, PARTICULARLY
08:56AM 12 POST-EMPLOYMENT.

08:56AM 13 THE REPUTATIONAL, REPUTATIONAL DAMAGE IS SOMETHING THAT
08:57AM 14 ALL PROFESSIONALS ARE CONCERNED ABOUT.

08:57AM 15 BUT HOW DOES THAT, HOW DOES THAT WEIGH IN HERE WITH HIS
08:57AM 16 POST, POST-EMPLOYMENT? HOW IS THAT RELEVANT HERE?

08:57AM 17 MR. COOPERSMITH: YES, YOUR HONOR. I'M HAPPY TO
08:57AM 18 ADDRESS THAT. THANK YOU.

08:57AM 19 THE COURT: YES. THANK YOU.

08:57AM 20 MR. COOPERSMITH: SO THE COURT I THINK HAS THE DATES
08:57AM 21 OF HIS EMPLOYMENT CORRECT, AND THOSE ARE THE THREE AFTER
08:57AM 22 THERANOS.

08:57AM 23 THE ONE THAT GOT THE IMMEDIATE JEOPARDY, THREE IMMEDIATE
08:57AM 24 JEOPARDIES ACTUALLY, WAS A LABORATORY CALLED PERKIN ELMER WHERE
08:57AM 25 HE STILL WORKS.

08:57AM 1 BY THE WAY, YOU'RE RIGHT THAT JUST IN FEBRUARY, RECENTLY,
08:57AM 2 CMS AND THE STATE OF CALIFORNIA TOLD HIM THAT THEY'VE RESOLVED
08:57AM 3 THAT AFTER NINE MONTHS OR SO.

08:57AM 4 THE COURT: RIGHT.

08:57AM 5 MR. COOPERSMITH: THAT DOESN'T MATTER TO OUR
08:57AM 6 ARGUMENT. WE ARE NOT SEEKING TO INTRODUCE OR GETTING
08:57AM 7 PERMISSION TO ASK HIM QUESTIONS BASED ON TRYING TO SHOW THAT
08:57AM 8 HE'S A BAD LAB DIRECTOR.

08:58AM 9 WE'RE ALSO NOT TRYING TO SHOW BIAS IN THE SENSE THAT HE'S
08:58AM 10 TESTIFYING A CERTAIN WAY BECAUSE HE'S AFRAID OF BEING
08:58AM 11 PROSECUTED OR SUBJECTED TO ADDITIONAL REGULATORY ACTION. WE'RE
08:58AM 12 NOT ARGUING THAT. THAT MIGHT BE THE CASE, BUT THAT'S NOT OUR
08:58AM 13 ARGUMENT.

08:58AM 14 THE ARGUMENT IS REALLY ALL ABOUT, AS THE COURT SAID, ON
08:58AM 15 THE REPUTATIONAL SIDE.

08:58AM 16 AND THE ISSUE IS THIS: THAT DR. ROSENDORFF -- I MEAN,
08:58AM 17 WHAT ARE THE CHANCES, RIGHT? HE'S A LABORATORY DIRECTOR. HE'S
08:58AM 18 A MEDICAL DOCTOR. HE WORKED AT THERANOS. OBVIOUSLY WE'RE
08:58AM 19 DEALING WITH THE ISSUES THAT ALLEGEDLY AROSE THERE.

08:58AM 20 AND THEN WE'VE GOT THREE OTHER LABS WHERE THERE'S VARYING
08:58AM 21 DEGREES OF ISSUES.

08:58AM 22 AND WHAT WE'RE TRYING TO DO HERE, YOUR HONOR, IS, IS GET
08:58AM 23 THE BIAS POINT AROUND. AS YOU KNOW, THE LAW GIVES THE DEFENSE
08:58AM 24 LATITUDE ON PROBATIVE BIAS, BUT WE'RE TRYING TO DO THAT IN A
08:58AM 25 WAY THAT DOESN'T CREATE THE NEED FOR MINI TRIALS OR DIVERSIONS

08:58AM 1 ABOUT LET'S GET INTO A WHOLE OTHER SEPARATE TRIAL ABOUT WHAT
08:59AM 2 ACTUALLY HAPPENED AT PERKIN ELMER. THAT'S NOT THE ISSUE. THE
08:59AM 3 DETAILS ACTUALLY DON'T MATTER THAT MUCH.

08:59AM 4 WHAT REALLY MATTERS IS THAT THIS IS A MEDICAL DOCTOR, A
08:59AM 5 PROFESSIONAL WHO HAS NOW BEEN AT FOUR DIFFERENT LABS. ON HIS
08:59AM 6 LINKEDIN PAGE, FOR EXAMPLE, HE DELETES THE UBIOME EXPERIENCE
08:59AM 7 THAT HE WORKED THERE ALTOGETHER. OBVIOUSLY HE DOESN'T WANT
08:59AM 8 THAT.

08:59AM 9 WITH RESPECT TO THERANOS, IT JUST SAYS BIOTECHNOLOGY
08:59AM 10 COMPANY IN SILICON VALLEY BECAUSE HE DOESN'T WANT TO BE
08:59AM 11 ASSOCIATED WITH THAT.

08:59AM 12 SO HE CLEARLY IS CONCERNED ABOUT HIS REPUTATION.

08:59AM 13 AND THE ISSUE IS, FOR SOMEONE LIKE THAT WHO NOW IN ANY
08:59AM 14 OTHER EMPLOYMENT OR CONFERENCES HE GOES TO OR WHATEVER, HE HAS
08:59AM 15 TO EXPLAIN, POTENTIALLY, HOW IS IT THAT I WAS LABORATORY
08:59AM 16 DIRECTOR AT THESE FOUR COMPANIES THAT ALL GOT INTO DIFFICULTIES
08:59AM 17 WITH THE FEDERAL AND STATE GOVERNMENT'S AND IT'S NOT -- IT'S
08:59AM 18 NOTHING TO DO WITH ME. I'M PERFECTLY FINE.

08:59AM 19 I THINK HE'S GOT TO -- AND THIS IS THE DEFENSE THEORY OF
08:59AM 20 BIAS -- HE'S GOT TO SAY THAT IT IS SOMEONE ELSE'S FAULT.

09:00AM 21 AND HE'S ALSO GOT TO LAY IT ON AS THICK AS HE CAN, AND
09:00AM 22 WHETHER IT'S MR. BALWANI'S FAULT, WHICH I'M SURE HE'LL SAY
09:00AM 23 BASED ON THE DOCUMENTS AND THE PREVIOUS TESTIMONY IN THE OTHER
09:00AM 24 TRIAL, OR WHETHER IT'S DR. YOUNG'S FAULT OR OTHER PEOPLE'S
09:00AM 25 FAULT, MS. HOLMES'S FAULT, I THINK HE'S GOT TO, LIKE, CLAIM

09:00AM 1 THAT HE WAS BASICALLY, YOU KNOW, SOME KIND OF HERO TO RAISE
09:00AM 2 ISSUES AT THERANOS AND REALLY LAY IT ON VERY THICK IN ORDER TO,
09:00AM 3 IN A VERY PUBLIC WAY, DEAL WITH THE REPUTATIONAL DAMAGE THAT
09:00AM 4 COMES WITH WORKING NOT ONLY AT THERANOS, BUT THESE OTHER THREE
09:00AM 5 LABS.

09:00AM 6 AND I THINK ALL TAKEN TOGETHER, I THINK THAT'S THE
09:00AM 7 REPUTATIONAL DAMAGE.

09:00AM 8 AND I WOULD CITE THE COURT TO THE U.S. VERSUS BROOKE CASE
09:00AM 9 FROM THE NINTH CIRCUIT, THAT'S 4 F.3D 1480. AND THAT'S THE
09:00AM 10 CASE WHERE THE COURT GOES INTO, ON 1489 OF THAT OPINION, INTO
09:00AM 11 DETAIL ABOUT THE LATITUDE THAT SHOULD BE GIVEN TO THE DEFENSE
09:00AM 12 ON PROVING BIAS.

09:01AM 13 NOW, I AM, AND WE SAID THIS IN THE BRIEF, I'M MINDFUL OF
09:01AM 14 THE NEED TO NOT HAVE, YOU KNOW, HOURS OR DAYS OF TRIAL
09:01AM 15 TESTIMONY ABOUT SOME OTHER EMPLOYMENT OR OTHER LABORATORY.

09:01AM 16 WHAT WE INTEND TO DO IN THIS REGARD IS TO JUST SORT OF
09:01AM 17 BRING UP THE FACT THAT THERE WERE THESE INVESTIGATIONS, AND HE
09:01AM 18 DID WORK AT THESE COMPANIES, AND THE DATES THAT HE WORKED
09:01AM 19 THERE, AND SIMPLY TO BRING THAT OUT.

09:01AM 20 AND WE'RE NOT REALLY PLANNING TO GO INTO DETAIL ABOUT,
09:01AM 21 WELL, EXACTLY WHAT HAPPENED AT PERKIN ELMER? AND EXACTLY WHAT
09:01AM 22 HAPPENED, OTHER THAN THE FACT THAT THERE WAS AN IMMEDIATE
09:01AM 23 JEOPARDY FINDING, AND WE'LL EVEN BRING IT OUT THAT IT WAS
09:01AM 24 EVENTUALLY RESOLVED IN NINE MONTHS.

09:01AM 25 THAT'S IT. I'M NOT PLANNING TO PROBE, YOU KNOW, LET'S GET

09:01AM 1 INTO THE DETAILS OF EXACTLY WHAT THE SMART GUT PROGRAM WAS AT
09:01AM 2 UBIOME AND HOW THAT WORKED AND SO FORTH.

09:01AM 3 I WOULD JUST SAY, THOUGH, IN THAT REGARD, WITH REGARD TO
09:01AM 4 UBIOME IN PARTICULAR, WE DID, I THINK, CITE THE INDICTMENT IN
09:01AM 5 THE REPLY BRIEF WE FILED THE OTHER NIGHT. AND IF THE COURT
09:02AM 6 NEEDS A COPY, I HAVE SOME HAND-UP COPIES AND I'VE HIGHLIGHTED
09:02AM 7 SOME SECTIONS.

09:02AM 8 BUT RIGHT DURING DR. ROSENDORFF'S TIME THERE, THAT'S WHEN
09:02AM 9 THEY REPORTED TO VALIDATE ONE OF THEIR TESTS THAT WAS DEEMED TO
09:02AM 10 BE FRAUDULENT BY THIS SAME U.S. ATTORNEY'S OFFICE, THE SMART
09:02AM 11 GUT PROGRAM. HE WORKED THERE AT KEY TIMES. THE INDICTMENT IS
09:02AM 12 CHOCK-FULL ABOUT HOW THERE'S A LACK OF MEDICAL NECESSITY AND
09:02AM 13 THERE'S PROBLEM WITH VALIDATIONS.

09:02AM 14 YES, THERE IS ALSO BILLING FRAUD AGAINST THE TWO FOUNDERS
09:02AM 15 OF THE COMPANY WHO ARE INDICTED.

09:02AM 16 THE COURT: WHAT ARE THE CHARGES IN THE INDICTMENT?
09:02AM 17 IS THERE --

09:02AM 18 MR. COOPERSMITH: THE CHARGES --

09:02AM 19 THE COURT: ARE THERE CHARGES -- MY POINT IS, ARE
09:02AM 20 THERE CHARGES THAT CHARGE THE COMPANY WITH LABORATORY FRAUD?

09:02AM 21 MR. COOPERSMITH: WELL, YES.

09:02AM 22 THE COURT: OH.

09:02AM 23 MR. COOPERSMITH: IT'S CONSPIRACY TO COMMIT HEALTH
09:02AM 24 CARE FRAUD, HEALTH CARE FRAUD, AND THEN THERE'S IDENTITY
09:02AM 25 CHARGES AND WIRE FRAUD CHARGES, AND SECURITIES FRAUD CHARGES.

09:02AM 1 JUST TO BE CLEAR, I MEAN, THE HEALTH CARE FRAUD I THINK
09:03AM 2 DOES PRIMARILY, JUST TO BE CANDID, DID PRIMARILY RELATE TO THE
09:03AM 3 BILLING ISSUES, BUT THAT'S NOT OUR POINT.

09:03AM 4 THE POINT IS THAT THERE WAS A LAB DIRECTOR PRIOR TO
09:03AM 5 ROSENDORFF'S TENURE AT UBIOME WHO RESIGNED, AND THERE WERE TWO
09:03AM 6 LABORATORY DIRECTORS WHO BROUGHT ISSUES UP, AND ROSENDORFF IS
09:03AM 7 SANDWICHED IN THE MIDDLE AND DOESN'T DO ANYTHING, AND HE
09:03AM 8 EVENTUALLY GOT FIRED AFTER -- I THINK HE ONLY WORKED THERE
09:03AM 9 BETWEEN FEBRUARY AND NOVEMBER IN 2016.

09:03AM 10 BUT WE THINK THAT, YOU KNOW, THERE'S ENOUGH THERE, AND
09:03AM 11 EVEN APART FROM THE DETAILS AND EVEN APART FROM WHETHER HE'S A
09:03AM 12 SUBJECT OR HAD ANY EXPOSURE, YOU KNOW, FROM A CRIMINAL OR A
09:03AM 13 CIVIL STANDPOINT THERE, THAT'S NOT OUR POINT.

09:03AM 14 IT'S THAT MERELY BEING ASSOCIATED WITH THESE COMPANIES AS
09:03AM 15 LAB DIRECTOR CREATES A REPUTATIONAL TAIN'T THAT CREATES BIAS,
09:03AM 16 AND THAT'S WHAT WE WANT TO PROBE IN A LIMITED WAY SO, AS I
09:03AM 17 SAID, TO AVOID THE NEED FOR MINI TRIALS.

09:04AM 18 THE COURT: SO JUST THE ASSOCIATION CREATES THAT
09:04AM 19 ISSUE. THAT'S CHARACTER, ISN'T IT?

09:04AM 20 MR. COOPERSMITH: NO, IT'S NOT, YOUR HONOR. IT'S
09:04AM 21 BIAS.

09:04AM 22 THE COURT: OKAY.

09:04AM 23 MR. COOPERSMITH: AND WE'RE NOT SEEKING TO SHOW THAT
09:04AM 24 DR. ROSENDORFF IS A BAD PERSON, OR EVEN THAT HE'S A BAD LAB
09:04AM 25 DIRECTOR, BECAUSE I AGREE WITH THE COURT, THAT TO TRY TO BRING

09:04AM 1 OUT THAT HE'S A BAD LAB DIRECTOR, THAT'S WHERE YOU WOULD HAVE
09:04AM 2 TO GET INTO EXACTLY WHAT DID HE DO? AND WHAT IS HIS FAULT AND
09:04AM 3 WHAT IS NOT HIS FAULT? WE'RE NOT INTERESTED IN THAT.

09:04AM 4 WE'RE ONLY INTERESTED IN THE BIAS POINT, WHICH, AS I SAID,
09:04AM 5 THE LAW GIVES DEFENSE COUNSEL LATITUDE TO EXPLORE, AND THE JURY
09:04AM 6 SHOULD BE UNDERSTANDING EXACTLY WHAT MIGHT MOTIVATE THIS
09:04AM 7 WITNESS TO TESTIFY A CERTAIN WAY, AND IT'S JUST BIAS. AND IT'S
09:04AM 8 THE BIAS ASSOCIATED WITH THE TAINT.

09:04AM 9 FOR EXAMPLE, IF I WERE TO ASK HIM, DR. ROSENDORFF, WHY DID
09:04AM 10 YOU REMOVE -- ISN'T THERE AN EMPLOYER ON YOUR LINKEDIN PAGE
09:04AM 11 THAT YOU REMOVED?

09:04AM 12 AND HE WOULD, ANSWERING HONESTLY, I BELIEVE HE WOULD SAY,
09:04AM 13 WELL, I ONLY WORKED THERE A SHORT TIME, AND I DON'T WANT TO BE
09:04AM 14 ASSOCIATED WITH A COMPANY THAT IS THE SUBJECT OF AN INDICTMENT,
09:05AM 15 RIGHT?

09:05AM 16 THAT WOULD SEEM LIKE TO BE THE HONEST ANSWER.

09:05AM 17 BUT HE CAN ANSWER HOWEVER HE WANTS.

09:05AM 18 THE POINT IS THAT'S WHAT HAPPENED, AND IT'S THE BIAS POINT
09:05AM 19 THAT WE'RE INTERESTED IN.

09:05AM 20 THE COURT: OKAY.

09:05AM 21 MR. BOSTIC.

09:05AM 22 MR. BOSTIC: YOUR HONOR, I THINK MR. COOPERSMITH'S
09:05AM 23 ARGUMENT ILLUSTRATES THE DANGER IN ALLOWING EXPLORATION OF
09:05AM 24 THESE POINTS.

09:05AM 25 HE BEGAN BY SAYING THE GOAL IS NOT TO SHOW THAT

09:05AM 1 DR. ROSENDORFF IS A BAD LAB DIRECTOR, BUT THEN A MINUTE LATER
09:05AM 2 HE WAS ASKING, WHAT ARE THE CHANCES THAT DR. ROSENDORFF WOULD
09:05AM 3 WORK AT THESE MULTIPLE COMPANIES, EACH OF WHICH WOULD HAVE AN
09:05AM 4 ISSUE?

09:05AM 5 AND I THINK THE OBVIOUS AND INESCAPABLE INSINUATION THERE
09:05AM 6 IS THAT SOMEHOW DR. ROSENDORFF IS TO BLAME FOR THE ISSUES THAT
09:05AM 7 CAME UP AT THESE OTHER COMPANIES.

09:05AM 8 I THINK THE DEFENSE BRIEFING ASKS WHETHER DR. ROSENDORFF
09:05AM 9 SHOULD BE VIEWED AS A LAB INDUSTRY TYPHOID MARY. IT'S THAT
09:05AM 10 KIND OF THINKING THAT ILLUSTRATES WHY THESE TOPICS ARE BEST
09:05AM 11 LEFT ALONE FOR PURPOSES OF THIS TRIAL UNDER 403.

09:06AM 12 ON THE BIAS POINT, I THINK WE SHOULD TALK ABOUT SOME OF
09:06AM 13 THE SPECIFIC FACTS OF THESE THREE COMPANIES, JUST TO MAKE SURE
09:06AM 14 THE RECORD IS CLEAR.

09:06AM 15 FIRST, WHEN IT COMES TO UBIOME, DR. ROSENDORFF WORKED
09:06AM 16 THERE, AS THE COURT NOTED, FOR A FEW MONTHS. HE WAS ABSENT FOR
09:06AM 17 A SUBSTANTIAL PORTION OF THAT DUE TO A HEALTH ISSUE. HE WAS IN
09:06AM 18 THE OFFICE VERY INFREQUENTLY.

09:06AM 19 WHEN HE WAS INTERVIEWED BY THE GOVERNMENT, HE MENTIONED
09:06AM 20 THAT THERE WERE SEVERAL KEY PEOPLE AT THE COMPANY, INCLUDING
09:06AM 21 THE CHIEF MEDICAL OFFICER, WHOM HE ONLY HAD INTRODUCTIONS WITH.

09:06AM 22 HE WAS NOT, IN SUM, HE WAS NOT VERY INVOLVED IN THE
09:06AM 23 OPERATIONS OF THAT COMPANY, AT LEAST FOR LARGE PERIODS OF TIME,
09:06AM 24 DURING THE TIME THAT HE WAS EMPLOYED THERE.

09:06AM 25 HE WAS INTERVIEWED BY THE GOVERNMENT IN CONNECTION WITH

09:06AM 1 ITS INVESTIGATION OF UBIOME ONCE.

09:06AM 2 HE WAS COOPERATIVE. HE PROVIDED INFORMATION. THAT WAS
09:06AM 3 THE END OF HIS INVOLVEMENT THERE.

09:06AM 4 THE NATURE OF THE CHARGES IN THAT CASE RELATE TO THE FACT
09:07AM 5 THAT THE EXECUTIVES OF THAT COMPANY, THE CO-CEO'S, CHOSE TO
09:07AM 6 BILL INSURANCE COMPANIES FOR TESTS THAT HAD NOT BEEN VALIDATED.

09:07AM 7 SO THIS IS INSURANCE BILLING FRAUD PERPETRATED BY THE
09:07AM 8 CEO'S OF THAT COMPANY THAT DID NOT INVOLVE THE COOPERATION OR
09:07AM 9 COMPLICITY OF DR. ROSENDORFF.

09:07AM 10 THERE'S NO INDICATION THAT HE WAS COMPLICIT IN THAT.

09:07AM 11 INDEED, IF HE HAD BEEN COMPLICIT, QUERY WHY HE WOULD HAVE
09:07AM 12 BEEN TERMINATED FROM THAT JOB.

09:07AM 13 HE WAS TERMINATED BECAUSE HE WAS NOT AVAILABLE ENOUGH. HE
09:07AM 14 WAS NOT -- I THINK PARTLY DUE TO HIS HEALTH ISSUE, HE WAS NOT
09:07AM 15 ABLE TO GIVE THAT JOB THE ATTENTION THAT IT NEEDED.

09:07AM 16 THE OTHER LAB DIRECTORS WHO DID BECOME AWARE OF THE
09:07AM 17 BILLING ISSUE QUIT OR RAISED CONCERNED ABOUT IT.

09:07AM 18 I THINK MR. COOPERSMITH WANTS THE COURT TO INFER OR ASSUME
09:08AM 19 THAT BECAUSE OTHERS KNEW ABOUT IT, DR. ROSENDORFF MUST HAVE
09:08AM 20 KNOWN ABOUT IT AS WELL.

09:08AM 21 WHY IS THAT RELEVANT TO THE BIAS INQUIRY?

09:08AM 22 THAT'S RELEVANT AS CHARACTER EVIDENCE ONLY. THIS, AGAIN,
09:08AM 23 SHOWS THAT AT LEAST A COMOTIVATION, A COMOTIVE OF THE DEFENSE
09:08AM 24 HERE IS TO DIRTY UP DR. ROSENDORFF AND TO TRY TO GET THE JURY
09:08AM 25 TO VIEW HIM AS AN INCOMPETENT OR UNETHICAL LAB DIRECTOR.

09:08AM 1 OTHERWISE WHY IS IT NECESSARY TO SPECULATE ABOUT WHY HE
09:08AM 2 KNEW ABOUT THE WRONGDOING AT UBIOME, FOR WHICH THERE'S NO
09:08AM 3 EVIDENCE TO SUPPORT THAT HE DID KNOW ABOUT IT.

09:08AM 4 AND AGAIN, THE ISSUE -- THE LANGUAGE IN THE INDICTMENT AND
09:08AM 5 THE PRESS RELEASE ABOUT TESTS THAT WERE NOT VALIDATED YET AND
09:08AM 6 TESTS THAT WERE NOT MEDICALLY NECESSARY, AGAIN, THAT'S A
09:08AM 7 PROBLEM BECAUSE INSURANCE WERE BILLED FOR THOSE TESTS.

09:08AM 8 I UNDERSTAND THAT THE TESTS WERE VALIDATED AT UBIOME, AND
09:08AM 9 I ALSO UNDERSTAND THAT RESULTS WERE NOT SENT TO PATIENTS UNTIL
09:09AM 10 TESTS WERE VALIDATED.

09:09AM 11 SO IT DOESN'T -- THAT CASE DOES NOT INVOLVE THE SAME KIND
09:09AM 12 OF FRAUD ON PATIENTS THAT THIS CASE INVOLVES.

09:09AM 13 IT DOESN'T INVOLVE PATIENTS RECEIVING TEST RESULTS THAT
09:09AM 14 WERE SUBSEQUENTLY DEEMED TO BE INACCURATE.

09:09AM 15 INSTEAD, THIS IS AN INSURANCE BILLING ISSUE THAT IS NOT
09:09AM 16 CONNECTED TO DR. ROSENDORFF.

09:09AM 17 WHEN IT COMES TO INVITAE, I THINK THE DEFENSE AGAIN WANTS
09:09AM 18 THE COURT TO ASSUME THAT THE PENDING INVESTIGATION BY THE
09:09AM 19 DEPARTMENT OF JUSTICE RELATES TO SOMETHING IN THE LAB OR THE
09:09AM 20 EARLIER ISSUE THAT INVITAE HAD WHERE APPROXIMATELY 15 PEOPLE
09:09AM 21 MAY HAVE RECEIVED FALSE NEGATIVE RESULTS FOR A RARE CANCER
09:09AM 22 MUTATION.

09:09AM 23 THAT'S NOT THE CASE. I CAN TELL THE COURT THOSE TWO
09:09AM 24 THINGS APPEAR TO BE INDEPENDENT. I HAVE A BASIC UNDERSTANDING
09:09AM 25 OF THE NATURE OF THE PENDING INVESTIGATION, AND OBVIOUSLY I

09:09AM 1 CAN'T REVEAL THE DETAILS, BUT IT DOES NOT RELATE TO
09:10AM 2 DR. ROSENDORFF'S TIME AT THE COMPANY OR HIS CONDUCT IN THE LAB.
09:10AM 3 SO THESE ARE TWO SEPARATE THINGS. I THINK BRINGING OUT
09:10AM 4 THAT PENDING INVESTIGATION WOULD BE MISLEADING BECAUSE IT WOULD
09:10AM 5 CREATE THE IMPLICATION, THE INSINUATION THAT THAT MIGHT HAVE
09:10AM 6 BEEN RELATED TO DR. ROSENDORFF'S TIME OR WHAT HE DID, AND
09:10AM 7 THAT'S SIMPLY NOT THE CASE.
09:10AM 8 FINALLY, WHEN IT COMES TO PERKIN ELMER, THE COURT, I
09:10AM 9 THINK, UNDERSTANDS THE FACTS THERE. THIS WAS SOMETHING THAT
09:10AM 10 WAS HANGING OVER THE LAB DURING THE TIME OF THE HOLMES TRIAL.
09:10AM 11 IT'S NO LONGER HANGING OVER THE LAB.
09:10AM 12 THAT'S WHY THE COURT ALLOWED SOME EXPLORATION OF THAT
09:10AM 13 TOPIC DURING THE LAST TRIAL WAS THE PENDENCY OF THAT
09:10AM 14 INVESTIGATION.
09:10AM 15 IT'S NO LONGER PENDING, AND IT'S BEEN RESOLVED IN FAVOR OF
09:10AM 16 THE LAB. SO THERE'S NOW NO ARGUMENT THAT CONSEQUENCES HANGING
09:10AM 17 OVER DR. ROSENDORFF MIGHT IN SOME WAY GIVE HIM AN INCENTIVE TO
09:10AM 18 SHAPE HIS TESTIMONY IN A FAVORABLE WAY TO THE GOVERNMENT.
09:10AM 19 SO THE DEFENSE HERE IS IN A FAR WEAKER POSITION THAN THE
09:11AM 20 HOLMES TEAM WAS WHEN THEY WERE ASKING TO BE ALLOWED TO EXPLORE
09:11AM 21 THIS SUBJECT MATTER, AND I THINK THE COURT'S RULING SHOULD
09:11AM 22 REFLECT THAT.
09:11AM 23 WHEN IT COMES TO THE DEFENSE'S BIAS OR INCENTIVE ARGUMENT,
09:11AM 24 I THINK IT'S IMPORTANT TO NOTE THAT THAT WOULD APPLY TO SO MANY
09:11AM 25 SITUATIONS, AND IT'S SO FAR FROM THE TYPICAL SITUATION WHERE WE

09:11AM 1 SEE A GOVERNMENT WITNESS BEING CROSS-EXAMINED ABOUT BIAS, WHICH
09:11AM 2 IS WHERE THERE'S A COOPERATOR ON THE STAND WHO HAS ENGAGED IN
09:11AM 3 THEIR OWN ILLEGAL CONDUCT, AND MAYBE HE'S ENTERED INTO A
09:11AM 4 COOPERATION PLEA AGREEMENT WITH THE GOVERNMENT, WHERE THERE ARE
09:11AM 5 TERMS DESCRIBING THE BENEFIT THAT THAT WITNESS MIGHT OBTAIN,
09:11AM 6 WHERE THERE'S AN UNDERSTANDING THAT THAT WITNESS MIGHT NOT BE
09:11AM 7 CHARGED FOR CRIMES OR MIGHT GET A BREAK ON SENTENCING BY VIRTUE
09:11AM 8 OF COOPERATION WITH THE GOVERNMENT, NONE OF THAT IS PRESENT
09:11AM 9 HERE.

09:11AM 10 THE SPECULATIVE NATURE OF DR. ROSENDORFF'S INCENTIVE TO
09:11AM 11 HELP THE GOVERNMENT MEANS THAT THE DEFENSE'S ARGUMENT IS FAR
09:12AM 12 WEAKER THAN IN A CASE LIKE THAT.

09:12AM 13 EVERY WITNESS HAS A MOTIVE TO PROTECT THEIR REPUTATION,
09:12AM 14 AND DR. ROSENDORFF'S TESTIMONY IN CONNECTION WITH THERANOS IS
09:12AM 15 RELEVANT ONLY TO HIS REPUTATION IN CONNECTION WITH THERANOS.

09:12AM 16 THE GOVERNMENT DOESN'T PLAN TO ASK HIM ABOUT THOSE
09:12AM 17 SUBSEQUENT LABS.

09:12AM 18 SO HIS TESTIMONY HERE ON DIRECT WON'T BEAR ON HOW PEOPLE
09:12AM 19 VIEW HIM IN CONNECTION WITH THOSE SUBSEQUENT EMPLOYERS.

09:12AM 20 IF HE HAD A STERLING RECORD, IF NONE OF HIS OTHER
09:12AM 21 COMPANIES HAD HAD ISSUES, HE WOULD STILL HAVE THE SAME
09:12AM 22 INCENTIVE TO LOOK GOOD IN THIS CASE TO PRESERVE HIS STERLING
09:12AM 23 REPUTATION.

09:12AM 24 IT'S SIMILAR TO THE CASE LAW THAT THE DEFENSE CITED WHEN
09:12AM 25 WE WERE TALKING ABOUT WEALTH EVIDENCE WHERE THE CASE LAW SAYS

09:12AM 1 THAT BOTH RICH PEOPLE AND POOR PEOPLE HAVE AN INCENTIVE TO GET
09:12AM 2 MORE MONEY, SO THAT'S NOT RELEVANT TO THAT INCENTIVE.

09:12AM 3 I WOULD ARGUE THE SAME IS TRUE HERE. TO THE EXTENT
09:12AM 4 DR. ROSENDORFF HAS AN INCENTIVE TO NOT TAKE THE BLAME FOR WHAT
09:13AM 5 HAPPENED AT THERANOS, THE DEFENSE CAN EXPLORE THAT AS PERMITTED
09:13AM 6 ON CROSS WITHOUT GETTING INTO THESE OTHER COMPANIES AND
09:13AM 7 EXTRANEOUS INFORMATION THAT DOESN'T BEAR ON WHAT IS HAPPENING
09:13AM 8 IN THIS TRIAL.

09:13AM 9 FINALLY, I'LL JUST NOTE THAT THE CASE LAW CITED BY THE
09:13AM 10 DEFENSE, AND AS I UNDERSTAND IT THE CASE LAW ON THIS TOPIC OF
09:13AM 11 BIAS, MAKES CLEAR THAT THE DEFENSE HAS MORE LATITUDE TO
09:13AM 12 CROSS-EXAMINE ON BIAS IN CASES WHERE THE WITNESS'S CREDIBILITY
09:13AM 13 IS MORE AT ISSUE.

09:13AM 14 SO IN A CASE WHERE THE GOVERNMENT'S CASE DEPENDS ON THE
09:13AM 15 CREDIBILITY OF A CERTAIN WITNESS, THE DEFENDANT'S RIGHTS TO
09:13AM 16 EXPLORE BIAS ARE HEIGHTENED.

09:13AM 17 THAT'S NOT THE CASE HERE. AS THE COURT WILL SEE,
09:13AM 18 DR. ROSENDORFF IS GOING TO TESTIFY ABOUT FACTS THAT OCCURRED
09:13AM 19 AND FACTS THAT ARE CORROBORATED BY EMAIL.

09:13AM 20 WE'RE NOT GOING TO BE ASKING THE JURY TO RELY SOLELY ON
09:13AM 21 DR. ROSENDORFF'S RECITATION OF EVENTS. WE'LL GO THROUGH DOZENS
09:14AM 22 OF EXHIBITS WITH HIM.

09:14AM 23 SO I DON'T THINK HIS CREDIBILITY IS AT ISSUE SUCH THAT THE
09:14AM 24 DEFENSE HAS THAT KIND OF HEIGHTENED RIGHT TO EXPLORE.

09:14AM 25 AND REALLY FINALLY, MR. COOPERSMITH'S REMARK THAT HE WOULD

09:14AM 1 ONLY INTEND TO EXPLORE THESE ISSUES AT A SUPERFICIAL LEVEL
09:14AM 2 SHOULD ONLY INCREASE THE COURT'S CONCERN.

09:14AM 3 IT ONLY TAKES A FEW QUESTIONS TO CREATE THIS IMPROPER
09:14AM 4 INSINUATION AND IMPLICATION THAT DR. ROSENDORFF WAS TO BLAME
09:14AM 5 FOR THESE ISSUES.

09:14AM 6 THE BURDEN WOULD BE ON THE GOVERNMENT TO SHOW THE JURY
09:14AM 7 WHAT THE TRUTH WAS, TO PROVIDE THE FULL PICTURE, TO EXONERATE
09:14AM 8 DR. ROSENDORFF IN CONNECTION WITH THESE OTHER EVENTS THAT HAVE
09:14AM 9 NOTHING TO DO WITH WHAT WE'RE HERE TO DECIDE.

09:14AM 10 THE COURT: ALL RIGHT. THANK YOU.

09:14AM 11 THAT'S ONE POINT -- I DIDN'T WANT TO INTERRUPT YOU,
09:14AM 12 MR. COOPERSMITH, BUT YOU SUGGEST, WE JUST WANT TO ASK HIM THESE
09:14AM 13 BRIEF THINGS ABOUT IT. WE'RE NOT GOING TO GO IN DEPTH.

09:14AM 14 BUT BY ASKING THOSE QUESTIONS, THE RESPONSE BY THE
09:14AM 15 GOVERNMENT WOULD HAVE TO, FOR REHABILITATION PURPOSES, WE WOULD
09:15AM 16 HAVE TO GO INTO EACH OF THOSE SEPARATE EVENTS TO GIVE THE JURY
09:15AM 17 A FULL PICTURE OF DR. ROSENDORFF'S INVOLVEMENT AS TO EACH OF
09:15AM 18 THOSE. IT SEEMS LIKE THAT'S WHAT WOULD HAVE TO HAPPEN.

09:15AM 19 MY EXPECTATION, AND MR. BOSTIC JUST TOLD US THIS AND
09:15AM 20 ANSWERED THE QUESTION, MY EXPECTATION WOULD BE THAT IF YOU WERE
09:15AM 21 TO JUST TOUCH ON THEM, AS YOU SAID YOU WOULD, AND I APPRECIATE
09:15AM 22 THAT, YOUR RECOGNITION THAT YOUR INTENT WOULD BE JUST TO
09:15AM 23 MINIMALLY PROBE, THAT WOULD -- AND MR. BOSTIC JUST TOLD US THE
09:15AM 24 GOVERNMENT WOULD THEN FEEL OBLIGATED TO REHABILITATE OR PROVIDE
09:15AM 25 OTHER INFORMATION FOR THE JURY TO GIVE A FULLER EXPLANATION,

09:15AM 1 WHICH IS THAT MINI TRIAL THAT YOU SPOKE OF AND THAT WE TALKED
09:15AM 2 ABOUT.

09:15AM 3 BUT LET ME HEAR YOUR RESPONSE.

09:15AM 4 MR. COOPERSMITH: SURE, YOUR HONOR. I'LL ADDRESS
09:15AM 5 THAT FIRST, AND THEN I HAVE SOME OTHER RESPONSES, BUT THANK
09:15AM 6 YOU.

09:15AM 7 THE COURT: SURE.

09:15AM 8 MR. COOPERSMITH: SO ON THAT POINT THAT THE COURT
09:16AM 9 JUST RAISED, TWO POINTS.

09:16AM 10 FIRST OF ALL, THE FACT THAT THE GOVERNMENT MIGHT FEEL A
09:16AM 11 NEED TO PROBE THIS MORE WITH DR. ROSENDORFF TO EXPLAIN, HAVE
09:16AM 12 HIM EXPLAIN HIMSELF ABOUT HOW HE WASN'T INVOLVED OR HE WASN'T
09:16AM 13 AT FAULT AT THESE OTHERS COMPANIES, THE FACT THAT THE
09:16AM 14 GOVERNMENT -- I'LL START AGAIN.

09:16AM 15 THE FACT THAT THE GOVERNMENT FEELS THAT NEED IS NOT A
09:16AM 16 REASON FOR THE DEFENSE -- TO DENY THE DEFENSE THE OPPORTUNITY
09:16AM 17 TO PROBE BIAS.

09:16AM 18 THE COURT: NO. AND PARDON ME FOR INTERRUPTING YOU.
09:16AM 19 I'M NOT SUGGESTING THAT.

09:16AM 20 WHAT I'M TALKING ABOUT IS THE EFFECT ON THE TRIAL TO THE
09:16AM 21 403 -- THE REALITY IS THAT'S WHAT IS GOING TO HAPPEN AND THAT'S
09:16AM 22 THE TIME CONSUMPTION. I MEAN, THAT'S THE REALITY OF IT.

09:16AM 23 MR. COOPERSMITH: RIGHT.

09:16AM 24 SO THIS IS REALLY ADDRESSED BY THE BROOKE CASE FROM THE
09:16AM 25 NINTH CIRCUIT THAT I CITED, AND THE COURT DISCUSSES THAT ON

09:16AM 1 PAGE 1489. THE COURT'S JUDGMENT IN THE OPINION IS THAT, FROM
09:17AM 2 THE NINTH CIRCUIT, IS THAT EVEN THOUGH, YES, THERE MIGHT BE
09:17AM 3 SOME NEED TO EXPEND SOME JUDICIAL RESOURCES ON DEALING WITH AN
09:17AM 4 ISSUE, IN THIS CASE IT WOULD BE COMING FROM THE GOVERNMENT, NOT
09:17AM 5 THE DEFENSE, THAT IS NOT A REASON TO DENY THE DEFENSE THAT
09:17AM 6 OPPORTUNITY TO PROBE BIAS, BECAUSE IT'S JUST THAT IMPORTANT.

09:17AM 7 THE COURT: SURE, IN THE APPROPRIATE CASE.

09:17AM 8 MR. COOPERSMITH: I'M SORRY?

09:17AM 9 THE COURT: IN THE APPROPRIATE CASE.

09:17AM 10 MR. COOPERSMITH: OF COURSE, YOUR HONOR. I MEAN,
09:17AM 11 EVERY CASE IS DIFFERENT. WE'RE OBVIOUSLY ASSERTING THIS CASE
09:17AM 12 IS ONE THAT THAT SHOULD BE ALLOWED.

09:17AM 13 IN ADDRESSING SOME OF MR. BOSTIC'S OTHER POINTS, I FEEL
09:17AM 14 LIKE WE'RE A BIT OF SHIPS PASSING IN THE NIGHT HERE IN SOME
09:17AM 15 WAYS, BECAUSE, FOR EXAMPLE, OUR COMMENT THAT, YOU KNOW,
09:17AM 16 DR. ROSENDORFF MIGHT BE TYPHOID MARY OF THE LAB INDUSTRY, THAT
09:17AM 17 IS NOT BECAUSE I WANT TO ASK HIM THAT OR TRY TO ESTABLISH THAT
09:17AM 18 HE'S A BAD LAB DIRECTOR.

09:17AM 19 IT'S THAT HE MIGHT BELIEVE FROM HIS, YOU KNOW, FOUR
09:17AM 20 DIFFERENT EXPERIENCES WITH FOUR DIFFERENT LABS, THAT HE MIGHT
09:17AM 21 BE PERCEIVED THAT WAY AS A TYPHOID MARY, AND THAT GIVES HIM AN
09:18AM 22 INCENTIVE TO TESTIFY IN A CERTAIN WAY, AND THAT'S THE BIAS.

09:18AM 23 SO WE USE THAT ISSUE JUST TO ILLUSTRATE THE BIAS, NOT TO
09:18AM 24 SAY THAT WE WOULD PROBE THAT.

09:18AM 25 AND OUR ARGUMENT IN THIS CASE IS DIFFERENT FROM THE

09:18AM 1 ARGUMENT THAT THE DEFENSE COUNSEL MADE IN THE HOLMES CASE.

09:18AM 2 THEIR ARGUMENT REALLY, AS I READ IT, HAD TO DO WITH
09:18AM 3 DR. ROSENDORFF'S INCENTIVE TO TESTIFY A CERTAIN WAY BECAUSE HE
09:18AM 4 WAS WORRIED ABOUT, YOU KNOW, BEING PROSECUTED OR SUBJECTED TO
09:18AM 5 REGULATORY ACTION BY THE FEDERAL OR STATE GOVERNMENT.

09:18AM 6 THAT IS NOT WHAT WE'RE SAYING, AND IT'S A COMPLETELY
09:18AM 7 DIFFERENT THING.

09:18AM 8 I WILL ALSO POINT OUT TO THE COURT THAT WE CITED THE CASE
09:18AM 9 IN OUR REPLY BRIEF, IT'S A SUPREME COURT CASE CALLED
09:18AM 10 UNITED STATES VERSUS ABEL, A-B-E-L, THAT'S AT 469 U.S. 45, AT
09:18AM 11 PAGE 52.

09:18AM 12 THAT TALKS ABOUT HOW IT'S NOT JUST THE FEAR OF A PARTY OR
09:19AM 13 PROSECUTION, BUT ALSO THE WITNESS'S SELF INTEREST THAT MIGHT
09:19AM 14 GIVE RISE TO BIAS, AND THAT'S WHAT WE'RE TALKING ABOUT HERE.

09:19AM 15 AND, YOUR HONOR, JUST GOING BACK TO THE FACTS.

09:19AM 16 WITH RESPECT TO INVITAE, STARTING WITH THAT ONE, WE HAVE
09:19AM 17 LIMITED KNOWLEDGE OF THAT, AND JUST TO TELL THE COURT THAT,
09:19AM 18 BECAUSE WE'RE NOT PRIVY TO THE INVESTIGATION THAT IS BEING
09:19AM 19 CONDUCTED BY THE DISTRICT OF MASSACHUSETTS, BUT I UNDERSTAND
09:19AM 20 THAT MR. BOSTIC AND MAYBE MR. LEACH MAY HAVE INQUIRED, AND I
09:19AM 21 APPRECIATE THEM DOING THAT.

09:19AM 22 THE ISSUE THERE, THOUGH, IS THAT WE HAD ASKED FOR
09:19AM 23 INFORMATION AS TO WHETHER THAT INVESTIGATION INCLUDED
09:19AM 24 DR. ROSENDORFF'S TIME AT INVITAE, AND THE REASON WHY WAS THAT
09:19AM 25 INTERESTING TO US IS BECAUSE THERE WERE 50,000 TESTS THAT WERE

09:19AM 1 APPARENTLY WRONG AND, YOU KNOW, THAT WAS KIND OF A BIG DEAL FOR
09:19AM 2 THAT COMPANY.

09:19AM 3 AND SO WE JUST WANTED TO KNOW -- WE KNOW HE WORKED THERE
09:20AM 4 BETWEEN 2015 AND 2017, AND WE WANTED TO KNOW WHETHER THE
09:20AM 5 INVESTIGATION TOUCHED ON HIS TIME AS LAB DIRECTOR, BECAUSE IF
09:20AM 6 THERE WERE ERRORS, HE WOULD ALSO BE RESPONSIBLE. AS THE COURT
09:20AM 7 HAS HEARD, HE'S THE LAB DIRECTOR.

09:20AM 8 WHAT WE GOT BACK FROM THE GOVERNMENT WAS THAT THERE WERE
09:20AM 9 NO DOCUMENTS IN THE GOVERNMENT'S POSSESSION THAT RELATED TO HIS
09:20AM 10 TIME, AND THAT'S INTERESTING, BUT WE DON'T KNOW FROM THAT
09:20AM 11 ANSWER WHETHER IT MEANT THAT THEY JUST DIDN'T GET THE DOCUMENTS
09:20AM 12 YET OR WHETHER -- YOU KNOW, SOMETIMES COMPANIES TAKE MONTHS TO
09:20AM 13 FERRET OUT DOCUMENTS AND PRODUCE THEM.

09:20AM 14 AND SO WHAT I'M HEARING TODAY, THOUGH, FROM MR. BOSTIC,
09:20AM 15 IS -- AND IF THERE'S FURTHER INFORMATION, I'M HAPPY TO GET
09:20AM 16 IT -- THAT THEY'RE NOW SAYING THAT THE SUBPOENA, THE
09:20AM 17 INVESTIGATION DOES NOT RELATE IN ANY WAY TO HIS TIME AT
09:20AM 18 INVITAE.

09:20AM 19 IF THAT'S THE CASE, I THINK WHAT THAT WOULD DO IS REMOVE
09:20AM 20 THE CONNECTION OF DR. ROSENDORFF TO THAT INVESTIGATION. IT
09:20AM 21 WOULDN'T NECESSARILY REMOVE THE PERCEPTION OF BIAS, BUT THAT
09:20AM 22 MIGHT CHANGE THE SITUATION WITH INVITAE.

09:20AM 23 I JUST WANT TO MAKE SURE THAT'S REALLY THE CASE, BECAUSE
09:21AM 24 WE DON'T KNOW ONE WAY OR THE OTHER WHETHER THE INVESTIGATION
09:21AM 25 INCLUDED HIS TIME THERE OR NOT.

09:21AM 1 AS TO UBIOME, YOU KNOW, WHAT HAPPENED IN THAT CASE -- AND
09:21AM 2 THIS IS, YOU KNOW, AT PARAGRAPH 38 OF THE INDICTMENT, LINE 1 --
09:21AM 3 IT'S ABOUT DECEIVING HEALTH CARE PROVIDERS AND INSURANCE
09:21AM 4 PROVIDES REGARDING TESTS THAT WERE, QUOTE, "NOT VALIDATED AND
09:21AM 5 NOT MEDICALLY NECESSARY."

09:21AM 6 AND IF YOU'RE A MEDICAL DOCTOR, A PATHOLOGIST LIKE
09:21AM 7 DR. ROSENDORFF WHO IS THE LAB DIRECTOR OF A COMPANY LIKE A
09:21AM 8 COMPANY LIKE UBIOME, YOU ARE NOT SUPPOSED TO AUTHORIZE
09:21AM 9 UNMEDICALLY NECESSARY TESTS. SO HE'S CONNECTED WITH THAT.

09:21AM 10 BUT I WOULD ALSO SUBMIT TO THE COURT, IT DOESN'T EVEN
09:21AM 11 MATTER THAT MUCH EXACTLY WHETHER HE'S INVOLVED IN DETAILS.
09:21AM 12 APPARENTLY HE WAS INTERESTING ENOUGH THAT HE WAS INTERVIEWED IN
09:21AM 13 THE UBIOME INVESTIGATION. SO HE HAD SOME KNOWLEDGE APPARENTLY,
09:22AM 14 AT LEAST THE GOVERNMENT THOUGHT SO.

09:22AM 15 THE MORE RELEVANT POINT, THOUGH, IS THAT BEING CONNECTED
09:22AM 16 WITH THESE COMPANIES, BEING ASSOCIATED WITH THESE COMPANIES,
09:22AM 17 ONE AFTER THE OTHER AFTER HE LEAVES THERANOS, GIVES RISE TO
09:22AM 18 THIS NEED -- AND THIS IS THE BIAS -- TO TESTIFY THAT THERANOS,
09:22AM 19 LIKE, NOTHING WAS MY FAULT, I DID EVERYTHING RIGHT, IT'S
09:22AM 20 MR. BALWANI'S FAULT, OR IT'S DR. YOUNG'S FAULT, OR IT'S
09:22AM 21 MS. HOLMES'S FAULT, OR WHOEVER HE CAN BLAME AND NOT TAKING ANY
09:22AM 22 OF THAT BLAME UPON HIMSELF.

09:22AM 23 AND FOR THESE REASONS I THINK WE SHOULD BE ALLOWED TO
09:22AM 24 PROBE THIS IN THE LIMITED WAY THAT I HAVE DESCRIBED TO THE
09:22AM 25 COURT.

09:22AM 1 THE COURT: SO THAT ANALYSIS SUGGESTS THAT HE DID
09:22AM 2 HAVE FAULT THEN IN THESE -- IN EACH OF THESE THREE SUBSEQUENT
09:22AM 3 EMPLOYERS.

09:22AM 4 IS THAT RIGHT?

09:22AM 5 MR. COOPERSMITH: YOU KNOW, HE MIGHT WELL,
09:22AM 6 YOUR HONOR.

09:22AM 7 BUT I'M ONLY TELLING THE COURT THAT NOT BECAUSE THAT'S
09:22AM 8 PART OF THE EXAMINATION, BUT JUST TO SHOW THAT IT'S NOT LIKE
09:22AM 9 HE'S COMPLETELY DISCONNECTED FROM THESE EVENTS, RIGHT? HE'S AT
09:22AM 10 THESE COMPANIES.

09:22AM 11 THE COURT: WELL, HE'S AN EMPLOYEE.

09:22AM 12 MR. COOPERSMITH: HE IS. HE'S NOT JUST AN EMPLOYEE.
09:22AM 13 HE'S THE LABORATORY DIRECTOR IN CHARGE OF THE TESTING THAT IS
09:23AM 14 GOING ON THERE BY FEDERAL REGULATION. HE'S THE ULTIMATE
09:23AM 15 DECIDER OF WHAT TESTS --

09:23AM 16 THE COURT: SURE. BUT WHAT WE DON'T KNOW, AS FAR AS
09:23AM 17 THE UBIOME, WE DON'T KNOW IF THOSE TWO CEO'S WERE ROGUE AND
09:23AM 18 ACTED ON THEIR OWN WHEN THEY CHOSE TO BILL FOR TESTS, AS I
09:23AM 19 UNDERSTAND JUST AT A HIGH LEVEL, THAT THE TESTS THAT THEY
09:23AM 20 BILLED FOR MAY NOT HAVE BEEN APPROVED YET, AND IT MAY NOT HAVE
09:23AM 21 HAD ANYTHING TO DO WITH HIM. MAYBE HE DID, MAYBE HE WAS
09:23AM 22 COMPLICIT. BUT THAT'S STILL IN FLUX, I GUESS?

09:23AM 23 MR. COOPERSMITH: YOUR HONOR, THAT'S ONLY RELEVANT
09:23AM 24 AS TO WHETHER WE'RE GOING TO SAY, WELL, DR. ROSENDORFF IS
09:23AM 25 CONNECTED ENOUGH WITH UBIOME THAT IT IS A POTENTIAL SOURCE OF

09:23AM 1 BIAS.

09:23AM 2 AS TO THE ACTUAL FACTS OF UBIOME, I MEAN, WE'RE NOT
09:23AM 3 PLANNING TO ASK HIM, YOU KNOW, ISN'T IT TRUE THAT YOU APPROVED
09:23AM 4 MEDICALLY UNNECESSARY TESTS, AND IT'S IT TRUE -- THAT'S NOT
09:23AM 5 PART OF THE EXAMINATION, BUT I'M JUST TELLING THE COURT THAT
09:23AM 6 BECAUSE IT MIGHT BE NECESSARY TO CONNECT HIM, YOU KNOW, TO SOME
09:24AM 7 EXTENT TO THE COMPANY.

09:24AM 8 AND WHAT WE'RE TELLING YOU, YOU KNOW, IN TERMS OF THAT,
09:24AM 9 NOT FOR THE CROSS-EXAMINATION, IS THAT AS SOON AS A LAB
09:24AM 10 DIRECTOR AT UBIOME SAYS, THESE TESTS ARE NOT MEDICALLY
09:24AM 11 NECESSARY, I'M NOT AUTHORIZING THE RELEASE OF THESE RESULTS,
09:24AM 12 AND THAT'S MY POSITION, THEN THEY'RE NOT GOING TO BE ABLE TO
09:24AM 13 BILL THE INSURANCE COMPANIES. THAT'S IT, RIGHT?

09:24AM 14 BUT AS SOON AS THE LAB DIRECTOR DECIDES, WELL, OKAY, I'M
09:24AM 15 JUST GOING TO GO ALONG WITH THIS AND EVEN IN ONE CASE VALIDATE
09:24AM 16 SOMETHING CALLED SMART GUT RIGHT IN THE TIME THAT HE WAS THERE,
09:24AM 17 THEN NOW THAT ENABLES THE FOUNDERS TO GO AHEAD WITH THEIR
09:24AM 18 MEDICAL BILLING FRAUD.

09:24AM 19 AND I'M ONLY TELLING THE COURT THAT BECAUSE HE WAS
09:24AM 20 CONNECTED ENOUGH WITH THIS THAT HE WOULD BE, AT LEAST FROM THE
09:24AM 21 DEFENSE THEORY, CONCERNED ENOUGH ABOUT HIS REPUTATION.

09:24AM 22 IF YOU'RE THE LABORATORY DIRECTOR AT UBIOME AND THE
09:24AM 23 FOUNDERS ARE INDICTED FOR, AMONG OTHER THINGS, FURNISHING
09:25AM 24 MEDICALLY UNNECESSARY TESTS AND BILLING INSURANCE COMPANIES, I
09:25AM 25 THINK YOU HAVE A REPUTATIONAL PROBLEM, AND THAT'S WHERE WE ARE

09:25AM 1 WITH DR. ROSENDORFF.

09:25AM 2 THE COURT: SO WOULD YOUR QUESTION BE THE SIMPLE
09:25AM 3 QUESTION, AS YOU SAY, SIR, DO YOU HAVE CONCERNS ABOUT YOUR
09:25AM 4 REPUTATION? YES? NO?

09:25AM 5 MR. COOPERSMITH: YOU KNOW, I'M HOPEFUL THAT I MIGHT
09:25AM 6 ASK IT IN A MORE ARTFUL WAY, YOUR HONOR.

09:25AM 7 BUT I THINK THE QUESTIONS ARE, WHERE DID YOU WORK AFTER
09:25AM 8 THERANOS, AND LET'S ESTABLISH THOSE DATES; WHAT WERE THOSE
09:25AM 9 COMPANIES IN THE BUSINESS OF, PERIOD; AND ISN'T IT THE CASE
09:25AM 10 THAT ALL THREE OF THEM WERE SUBJECT TO INVESTIGATIONS,
09:25AM 11 INCLUDING UBIOME, INVITAE, AND PERKIN ELMER; AND ISN'T IT TRUE
09:25AM 12 WITH REGARD TO PERKIN ELMER THAT THAT WAS AN IMMEDIATE JEOPARDY
09:25AM 13 LETTER THAT WAS SENT TO YOU, DR. ROSENDORFF, FOR INCORRECT --
09:25AM 14 AND IS IT ALSO THE CASE THAT IT WAS EVENTUALLY RESOLVED AFTER
09:25AM 15 NINE MONTHS? THAT'S IT.

09:26AM 16 THE COURT: YOU WOULDN'T ASK HIM, ISN'T YOUR LAWYER
09:26AM 17 SITTING OUT IN THE AUDIENCE?

09:26AM 18 MR. COOPERSMITH: NO, PROBABLY NOT.

09:26AM 19 THE COURT: YOU SEE WHAT I'M SAYING. THAT'S THE
09:26AM 20 NATURE OF IT.

09:26AM 21 OKAY. MR. BOSTIC.

09:26AM 22 MR. BOSTIC: YOUR HONOR, I FIND A LOT OF
09:26AM 23 MR. COOPERSMITH'S ARGUMENTS ALARMING.

09:26AM 24 I THINK, FRANKLY, HE'S DEMONSTRATING, THROUGH THIS
09:26AM 25 ARGUMENT, THAT HE'S NOT CAPABLE OF DISCUSSING THESE TOPICS

09:26AM 1 WITHOUT MAKING IMPROPER INSINUATIONS AND ALLEGATIONS ABOUT
09:26AM 2 DR. ROSENDORFF'S INVOLVEMENT WHICH, AGAIN, JUST ARE NOT
09:26AM 3 SUPPORTED BY THE FACTS.

09:26AM 4 WHEN IT COMES TO UBIOME, I HEARD HIM JUST SAY THAT, AS A
09:26AM 5 LAB DIRECTOR, YOU'RE NOT SUPPOSED TO AUTHORIZE NONMEDICALLY
09:26AM 6 NECESSARY TESTS.

09:26AM 7 I'M NOT AWARE OF THAT REGULATION. I -- THAT AREA OF THE
09:26AM 8 LAW IS NOT AT ISSUE HERE, AND IT'S NOT CLEAR THAT THAT WAS THE
09:26AM 9 PROBLEM IN THE UBIOME CASE.

09:26AM 10 AGAIN, THE UBIOME -- EXCUSE ME. THE PROBLEM IN UBIOME WAS
09:26AM 11 THAT INSURANCE COMPANIES WERE BILLED FOR NONMEDICALLY NECESSARY
09:27AM 12 TESTS.

09:27AM 13 FROM THE LAB DIRECTOR'S PERSPECTIVE, MY UNDERSTANDING IS
09:27AM 14 THAT THE QUESTION IS WHETHER A TEST IS VALIDATED, WHETHER
09:27AM 15 IT'S -- WHETHER THE DATA SUPPORTS BEING ABLE TO RELEASE THAT
09:27AM 16 INFORMATION.

09:27AM 17 AND AGAIN, MY UNDERSTANDING OF THE FACTS IN UBIOME ARE
09:27AM 18 THAT IN THAT CASE THE TESTS WERE EVENTUALLY VALIDATED, AND IF
09:27AM 19 I'M REMEMBERING CORRECTLY, THE RESULTS WERE NOT RELEASED TO
09:27AM 20 PATIENTS UNTIL THE TESTS WERE VALIDATED, UNTIL THE DATA
09:27AM 21 SUPPORTED THE RELEASE OF THAT INFORMATION.

09:27AM 22 WHETHER THOSE TESTS WERE MEDICALLY NECESSARY OR NOT, AS I
09:27AM 23 UNDERSTAND IT, IS RELEVANT TO THE QUESTION OF WHETHER INSURANCE
09:27AM 24 COMPANIES CAN PROPERLY BE BILLED FOR IT, NOT WHETHER PATIENTS
09:27AM 25 CAN BE GIVEN THE OPTION TO TAKE THOSE TESTS.

09:27AM 1 SO AGAIN, I DON'T SEE THE CONNECTION OR THE ALLEGATION
09:27AM 2 THAT DR. ROSENDORFF WAS INVOLVED IN WRONGDOING HERE.

09:27AM 3 I THINK IT'S ENTIRELY IMPROPER AND SPECULATIVE FOR
09:27AM 4 MR. COOPERSMITH TO SAY THAT THE DEFENDANTS IN THAT CASE COULD
09:28AM 5 NOT HAVE COMMITTED THEIR CRIME WITHOUT THE ASSISTANCE OF
09:28AM 6 DR. ROSENDORFF. THAT'S WHAT I HEARD.

09:28AM 7 I HEARD THAT IF DR. ROSENDORFF HAD NOT BEEN COMPLICIT IN
09:28AM 8 AUTHORIZING THOSE TESTS, THEN THEY WOULDN'T HAVE BEEN ABLE TO
09:28AM 9 FRAUDULENTLY BILL THE INSURANCE COMPANIES.

09:28AM 10 BUT THAT'S SIMPLY NOT HOW THE GOVERNMENT SEES IT. THAT'S
09:28AM 11 NOT HOW THE CASE WAS CHARGED.

09:28AM 12 AND SO TO ALLOW MR. COOPERSMITH TO QUESTION WITH THAT VIEW
09:28AM 13 OF THE FACTS HERE IS REALLY DANGEROUS UNDER 403. I THINK IT
09:28AM 14 THREATENS -- OR IT CARRIES THE RISK OF THE JURY WALKING AWAY
09:28AM 15 WITH AN INACCURATE AND IRRELEVANT VIEW OF DR. ROSENDORFF'S
09:28AM 16 POTENTIAL INVOLVEMENT IN THIS COMPLETELY UNRELATED CRIME THAT
09:28AM 17 HAD -- IN WHICH HE WAS NOT IMPLICATED.

09:28AM 18 I THINK MR. COOPERSMITH'S RESPONSE TO THAT, IF I'M
09:28AM 19 UNDERSTANDING HIM CORRECTLY, IS THAT THE TRUTH DOESN'T MATTER.
09:28AM 20 IT DOESN'T MATTER WHETHER DR. ROSENDORFF WAS INVOLVED, WHETHER
09:28AM 21 HE WAS ACTUALLY TO BLAME FOR ANY OF THIS.

09:29AM 22 WHAT MATTERS IS THE APPEARANCE OF HIS INVOLVEMENT. SO
09:29AM 23 JUST THE FACT THAT HE'S ASSOCIATED WITH THESE COMPANIES CREATES
09:29AM 24 THIS INCENTIVE FOR HIM TO BE BIASSED AND TRY TO DEFEND HIS
09:29AM 25 REPUTATION.

09:29AM 1 I WOULD JUST ASK THE COURT TO THINK ABOUT HOW MANY
09:29AM 2 SITUATIONS THAT KIND OF ARGUMENTS WOULD ENCOMPASS.

09:29AM 3 ANY WITNESS WHO WAS AROUND SOME WRONGDOING WHO HAS ALSO
09:29AM 4 BEEN CONNECTED TO SOME OTHER SCANDALS OR RUMORS THAT MIGHT
09:29AM 5 NEGATIVELY AFFECT THEIR REPUTATION MIGHT FEEL THE KIND OF
09:29AM 6 PRESSURE THAT MR. COOPERSMITH IS DESCRIBING.

09:29AM 7 DOES THAT MEAN THAT THOSE COMPLETELY UNRELATED SCANDALS
09:29AM 8 AND RUMORS AND UNCONFIRMED REPORTS CAN THEN BE FODDER FOR
09:29AM 9 CROSS-EXAMINATION OF THAT WITNESS SIMPLY BECAUSE, IN DEFENSE
09:29AM 10 COUNSEL'S MIND, THAT MAY CREATE A PRESSURE ON THAT WITNESS TO
09:29AM 11 TRY TO REHABILITATE THEIR OVERALL REPUTATION?

09:29AM 12 I THINK THAT'S FAR TOO ATTENUATED, FAR TOO SPECULATIVE TO
09:29AM 13 CREATE THE KIND OF BIAS THAT THE CASE LAW RECOGNIZES, SO I
09:30AM 14 DON'T THINK THAT SUPPORTS CROSS-EXAMINATION HERE.

09:30AM 15 THE COURT: SO, MR. BOSTIC, THIS IS A UNIQUE
09:30AM 16 SITUATION WHERE THIS WITNESS, IN HIS POST-THERANOS EMPLOYMENT,
09:30AM 17 HAS EITHER CHOSEN POORLY OR SOMETHING HAS HAPPENED. HE'S JUST
09:30AM 18 HAD A STREAK OF BAD LUCK. BUT EACH COMPANY HE'S BEEN EMPLOYED
09:30AM 19 WITH HAD SOME ISSUES, THE MOST SERIOUS, OF COURSE, THE CEO'S
09:30AM 20 ARE SUBJECT TO THE FEDERAL INDICTMENT, AND THEN THE OTHERS WITH
09:30AM 21 TESTING ISSUES, ONE OF WHICH HAS BEEN RESOLVED.

09:30AM 22 SHOULD THAT IN ANY WAY COME IN? DOESN'T THAT HAVE
09:30AM 23 RELEVANCE? THE DEFENSE SAYS, WELL, THIS IS STRIKING IN THIS
09:30AM 24 CASE, IT'S VERY UNIQUE, IT'S A UNIQUE CIRCUMSTANCE, AND THE
09:30AM 25 JURY SHOULD, THEY SHOULD KNOW SOMETHING ABOUT THIS, AND THEN

09:30AM 1 THEY SHOULD BE THE ONES TO WEIGH THE CREDIBILITY OF THE
09:30AM 2 WITNESS.

09:30AM 3 DOES THAT HAVE ANY IMPACT, OR SHOULDN'T THIS BE SOMETHING
09:30AM 4 THAT THEY SHOULD HAVE AVAILABLE TO THEM WHEN THEY JUDGE THE
09:31AM 5 CREDIBILITY OF DR. ROSENDORFF?

09:31AM 6 MR. BOSTIC: SO TO THE EXTENT THAT IT'S STRIKING, I
09:31AM 7 THINK WE'RE BACK IN THE WORLD OF, AGAIN, LIKE THE COURT SAID,
09:31AM 8 LIKE MR. COOPERSMITH SAID, WHAT ARE THE CHANCES OF THIS
09:31AM 9 HAPPENING REPEATED TIMES?

09:31AM 10 COINCIDENCES DO HAPPEN.

09:31AM 11 I THINK WITHOUT A CONNECTION TO FAULT BY DR. ROSENDORFF,
09:31AM 12 WHICH STILL WOULD NOT MAKE IT NECESSARILY ADMISSIBLE BECAUSE
09:31AM 13 IT'S STILL IRRELEVANT, BUT WITHOUT CONNECTIONS TO FAULT BY
09:31AM 14 DR. ROSENDORFF, I THINK IT'S, IT'S AN EASIER QUESTION TO ANSWER
09:31AM 15 THAT THIS IS OUTSIDE OF THE SCOPE OF WHAT WE'RE HERE TO TALK
09:31AM 16 ABOUT IN THIS CASE.

09:31AM 17 THE FACT THAT THIS HAS HAPPENED OR THAT THERE HAVE BEEN
09:31AM 18 UNRELATED ISSUES AT DIFFERENT COMPANIES, I THINK TAKEN TOGETHER
09:31AM 19 WOULD BE RELEVANT IF IT WERE APPROPRIATE TO USE THESE THINGS AS
09:31AM 20 CHARACTER EVIDENCE FOR THIS WITNESS.

09:31AM 21 IF IT WERE APPROPRIATE TO TRY TO PAINT DR. ROSENDORFF AS A
09:31AM 22 BAD LAB DIRECTOR, THEN THE DEFENSE MIGHT HAVE MORE OF AN
09:32AM 23 ARGUMENT THAT THE JURY NEEDS TO KNOW ABOUT THESE THINGS.

09:32AM 24 BUT I THINK WE'VE ALL AGREED THAT THAT'S NOT AN
09:32AM 25 APPROPRIATE USE OF THAT MATERIAL, AND THAT'S NOT THE DEFENSE'S

09:32AM 1 STATED INTENTION.

09:32AM 2 SO I THINK, AGAIN, I THINK THE BIAS INCENTIVE, OR THE
09:32AM 3 INCENTIVE TO DEFEND HIS REPUTATION, IS TOO SPECULATIVE AND
09:32AM 4 ATTENUATED AND I THINK IT WOULD APPLY TO TOO MANY SITUATIONS.

09:32AM 5 I ALSO WOULD NOTE FOR THE COURT THAT THE INVITAE SUBPOENA,
09:32AM 6 I'M INFORMED THAT IT DOES COVER THE 2016 TIME PERIOD.

09:32AM 7 BUT MY UNDERSTANDING REMAINS THAT IT RELATES TO SEPARATE
09:32AM 8 CONDUCT FROM WHAT HAS BEEN DISCUSSED, AND I DON'T UNDERSTAND
09:32AM 9 DR. ROSENDORFF TO BE IMPLICATED IN THAT INVESTIGATION.

09:32AM 10 IF THE COURT HAS MORE QUESTIONS ABOUT THOSE DETAILS,
09:32AM 11 MR. LEACH WAS THE ONE WHO WAS IN TOUCH WITH THE DISTRICT OF
09:32AM 12 MASSACHUSETTS OFFICE ON THAT, SO I WOULD DEFER TO HIM IF THE
09:32AM 13 COURT HAS ADDITIONAL FACTUAL QUESTIONS.

09:32AM 14 THE COURT: ALL RIGHT. THANK YOU.

09:32AM 15 MR. COOPERSMITH.

09:32AM 16 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:32AM 17 YOU KNOW, THE ISSUE ISN'T REALLY WHETHER DR. ROSENDORFF
09:33AM 18 WAS AT FAULT IN THESE OTHER CASES.

09:33AM 19 I THINK THE COURT CAPTURED THE SITUATION VERY WELL JUST
09:33AM 20 BEFORE MR. BOSTIC SPOKE ABOUT THIS IS EXTRAORDINARY, THIS IS AN
09:33AM 21 UNUSUAL SITUATION.

09:33AM 22 MAYBE IT'S JUST COINCIDENCE. THAT DOES HAPPEN.

09:33AM 23 BUT THAT'S NOT REALLY RELEVANT TO THE INQUIRY OF WHETHER
09:33AM 24 IT SHOULD BE ALLOWED, THE CROSS SHOULD BE ALLOWED.

09:33AM 25 AND THE ISSUE ISN'T FAULT. THE ISSUE ISN'T WHAT I EVEN

09:33AM 1 VIEW THE FACTS AS. IT'S NOT WHETHER I, AS DEFENSE COUNSEL,
09:33AM 2 THINK HE IS MORE INVOLVED. IT'S NOT ABOUT WHETHER I WOULD MAKE
09:33AM 3 A DIFFERENT DECISION IF I WAS STILL IN THE U.S. ATTORNEY'S
09:33AM 4 OFFICE. THOSE ARE NOT THE ISSUES HERE.

09:33AM 5 THE ISSUES ARE SIMPLY WHETHER, IF YOU WERE INVOLVED WITH
09:33AM 6 THESE COMPANIES AND YOU WORKED THERE, AND APPARENTLY WE
09:33AM 7 UNDERSTAND THE SUBPOENA TO INVITAE DOES COVER THE TIME PERIOD,
09:33AM 8 OR AT LEAST SOME OF THE TIME PERIOD THAT DR. ROSENDORFF WAS
09:33AM 9 THERE, IF YOU'RE INVOLVED WITH THESE COMPANIES, YOU HAVE GOT
09:33AM 10 SOME EXPLAINING TO DO, AND THE EXPLAINING THAT YOU HAVE TO DO,
09:33AM 11 FROM DR. ROSENDORFF'S PERSPECTIVE, IS WHY IS IT NOT MY FAULT?
09:34AM 12 AND WHY IS IT THAT I'M AT ALL OF THESE COMPANIES?

09:34AM 13 AND JUST -- WE'RE NOT PLANNING TO PROBE EXACTLY, YOU KNOW,
09:34AM 14 WHAT HAPPENED AND WHAT HIS DUTIES WERE AND WHAT HE APPROVED AND
09:34AM 15 WHAT HE DIDN'T APPROVE.

09:34AM 16 IT'S REALLY JUST ABOUT THE WHOLE SITUATION REALLY CREATES
09:34AM 17 A REPUTATIONAL ISSUE, AND IT'S LIKE THAT'S IT, RIGHT? AND IT'S
09:34AM 18 JUST A BIAS.

09:34AM 19 AND IT'S THE QUESTIONS THAT I LAID OUT FOR THE COURT A FEW
09:34AM 20 MINUTES AGO THAT WE WOULD ASK, AND WE'RE NOT SEEKING TO DO MINI
09:34AM 21 TRIALS, WE THINK THE JURY SHOULD KNOW ABOUT BIAS.

09:34AM 22 AND I JUST WANT TO AGAIN COMMEND THE COURT TO THE BROOKE
09:34AM 23 CASE, BECAUSE THAT'S THE CASE WHERE THE NINTH CIRCUIT REALLY
09:34AM 24 LAYS OUT HOW IMPORTANT THIS IS THAT THE JURY HEAR THE
09:34AM 25 INFORMATION, AND THE FACT THAT THE GOVERNMENT MIGHT FEEL THE

09:34AM 1 NEED TO EXPLAIN SOMETHING DOESN'T REALLY MATTER, AND THEY CAN
09:34AM 2 DO THAT IF THEY WANT.

09:34AM 3 THE COURT: I AGREE WITH YOUR LATTER STATEMENT. THE
09:34AM 4 DECISION THAT THE COURT MAKES IS NOT BECAUSE, OH, IT'S GOING TO
09:34AM 5 PUT SOME JEOPARDY OR LEAN THE SCALES FOR THE GOVERNMENT TO HAVE
09:34AM 6 TO DO SOMETHING OR THE OTHER, AND I DON'T WANT THEM TO DO THAT.

09:35AM 7 MR. COOPERSMITH: OF COURSE.

09:35AM 8 THE COURT: NO. THAT'S NOT --

09:35AM 9 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:35AM 10 THE COURT: WHAT I'M LOOKING AT IS, WHAT IS THE --
09:35AM 11 IT ALMOST SOUNDS LIKE YOU SAY -- AND I APPRECIATE YOU SAYING --
09:35AM 12 NO, WE'RE NOT ASKING THAT HE'S AT FAULT.

09:35AM 13 BUT IT ALMOST SOUNDS LIKE THAT'S THE INSINUATION. THAT'S
09:35AM 14 REALLY THE INSINUATION THAT THE JURY WOULD HAVE, IS THAT HE WAS
09:35AM 15 AT THESE THREE PLACES, THEY HAD PROBLEMS, AND WE'RE NOT GOING
09:35AM 16 TO PROBE WHETHER IT WAS HIS FAULT OR NOT, BUT WE'RE GOING TO
09:35AM 17 PROBE THAT YOUR REPUTATION IS AT RISK BECAUSE OF THOSE THINGS.

09:35AM 18 AND IT JUST, IT JUST LEAVES THAT QUESTION. IT JUST SEEMS
09:35AM 19 TO ME, WITHOUT MORE, IT DOES, IT DOES LEAVE THE JURY WITH THAT
09:35AM 20 IMPRESSION THAT -- I KNOW YOU'RE AVOIDING SAYING THAT WE'RE NOT
09:35AM 21 GOING TO SAY HE'S A BAD LAB DIRECTOR, BUT THAT'S REALLY WHAT
09:35AM 22 THE JURY WILL RECEIVE, WON'T THEY?

09:35AM 23 MR. COOPERSMITH: I UNDERSTAND.

09:35AM 24 THE COURT: WHICH IS JUST CHARACTER EVIDENCE.

09:35AM 25 MR. COOPERSMITH: RIGHT, AND THAT'S THE REASON WE'RE

09:35AM 1 NOT GOING THERE, RIGHT? I MEAN, THERE MIGHT BE ARGUMENT THAT
09:36AM 2 WE COULD GO THERE, BUT THAT'S NOT WHAT I'M ASKING.

09:36AM 3 AND THE WAY THAT I'M PLANNING TO HANDLE THAT IS I'M NOT
09:36AM 4 GOING TO ASK DR. ROSENDORFF, LIKE, ANY QUESTIONS THAT TRY TO
09:36AM 5 DRAW OUT, YOU KNOW, WASN'T -- ISN'T IT TRUE, FOR EXAMPLE, THAT
09:36AM 6 UBIOME, THERE WAS A LACK OF MEDICAL NECESSITY THAT THE
09:36AM 7 GOVERNMENT ALLEGED? AND AREN'T YOU THE LAB DIRECTOR? AND
09:36AM 8 ISN'T IT YOUR JOB TO POLICE MEDICAL NECESSITY?

09:36AM 9 I'M NOT GOING TO ASK HIM THOSE QUESTIONS.

09:36AM 10 I SIMPLY WANT TO ASK HIM SOME BASIC QUESTIONS SO THE JURY
09:36AM 11 UNDERSTANDS HE WAS INVOLVED WITH THESE COMPANIES AND THE
09:36AM 12 CONCOMITANT INCENTIVE HE HAS TO SHAPE HIS TESTIMONY IN A
09:36AM 13 CERTAIN WAY IN THIS CASE, AND THEN HAVE THE ABILITY TO ARGUE AT
09:36AM 14 CLOSING THAT FOR THAT REASON, AND MAYBE OTHER REASONS UNRELATED
09:36AM 15 TO THAT, DR. ROSENDORFF, YOU KNOW, SHOULD NOT BE BELIEVED IN
09:36AM 16 ALL RESPECTS.

09:36AM 17 AND I THINK THAT'S WHAT THE DEFENSE CONFRONTATION CLAUSE
09:36AM 18 RIGHT SHOULD BE IN THIS SITUATION, RIGHT, IN TERMS OF PROBING
09:36AM 19 BIAS.

09:37AM 20 THE COURT: WELL, THANK YOU.

09:37AM 21 THAT'S ALL YOU WANT TO ASK IS THE INITIAL QUESTIONS ABOUT
09:37AM 22 HIS EMPLOYMENT, THERE WERE PROBLEMS THERE, AND THEN THAT LEAVES
09:37AM 23 IT -- IT LEAVES A VACUUM, WHICH NATURE ABHORS, AS TO WHAT WERE
09:37AM 24 THE FACTS THEN? BECAUSE THE JURY, TO GET THE FULL PICTURE
09:37AM 25 THEN, YOU'RE PRESENTING THEM, I'M JUST GOING TO GIVE THEM HALF

09:37AM 1 OF IT.

09:37AM 2 BUT TO GIVE THE FULL PICTURE THEN, THEY WOULD BE REQUIRED
09:37AM 3 TO KNOW THE REST, WOULDN'T THEY, TO MAKE A JUDGMENT AS TO
09:37AM 4 WHETHER OR NOT THEY SHOULD, AS YOU SAY, WHETHER OR NOT THEY
09:37AM 5 SHOULD BELIEVE HIM, THEY SHOULD ALSO BE INFORMED THAT THE FACTS
09:37AM 6 OF THE OTHER CASE, I WON'T GO THROUGH THEM, BUT THE FACTS OF
09:37AM 7 THE OTHER CASE.

09:37AM 8 MR. COOPERSMITH: RIGHT.

09:37AM 9 THE COURT: THAT WOULD SEEM TO BE WHAT WOULD HAVE TO
09:37AM 10 HAPPEN.

09:37AM 11 MR. COOPERSMITH: WELL, THAT'S CERTAINLY THE
09:37AM 12 GOVERNMENT'S DECISION WHETHER THEY WANT TO ADD TO THE RECORD ON
09:37AM 13 THESE THINGS.

09:37AM 14 BUT, AGAIN, IT SOUNDS LIKE WE'RE IN AGREEMENT, THAT'S NOT
09:37AM 15 A REASON TO NOT ALLOW IT IN THE FIRST PLACE.

09:38AM 16 SO, YOUR HONOR, THAT ISSUE, THERE'S ALL KINDS OF
09:38AM 17 SITUATIONS, AS WE ALL KNOW, AT TRIAL WHERE THE JURY IS NOT TOLD
09:38AM 18 100 PERCENT OF ALL OF THE FACTS THAT WE KNOW. THIS SITUATION
09:38AM 19 COMES UP ALMOST ON A DAILY BASIS AT TRIAL.

09:38AM 20 SO THE FACT THAT THEY ARE NOT GIVEN 100 PERCENT OF THE
09:38AM 21 FACTS OF WHAT HAPPENED AT THESE VARIOUS COMPANIES -- AND WHAT
09:38AM 22 I'M SAYING TO THE COURT IS THAT IT DOESN'T REALLY EVEN MATTER.

09:38AM 23 I MEAN, THE GOVERNMENT COULD EXPLORE ALL OF THE NOOKS AND
09:38AM 24 CRANNIES OF EXACTLY WHAT HAPPENED AT THESE COMPANIES, BUT IT
09:38AM 25 DOESN'T REALLY MATTER BECAUSE THE REPUTATIONAL BIAS POINT STILL

09:38AM 1 REMAINS DESPITE EVEN IF IT WERE 100 PERCENT TRUE, EVEN IF IT
09:38AM 2 WERE 100 PERCENT TRUE THAT DR. ROSENDORFF BEARS NO FAULT
09:38AM 3 WHATSOEVER FOR THE EVENTS AT THESE COMPANIES, IT STILL WOULD
09:38AM 4 NOT MATTER TO HIS INCENTIVE TO SHADE HIS TESTIMONY A CERTAIN
09:38AM 5 WAY IN THIS CASE TO ESCAPE THE CONCLUSION THAT HE IS SOME KIND
09:38AM 6 OF TYPHOID MARY, TO USE THAT PHRASE.

09:39AM 7 SO THAT'S ALL WE HAVE ON THIS, YOUR HONOR, BUT WE THINK
09:39AM 8 THAT THE CROSS-EXAMINATION IN THE LIMITED SENSE THAT I HAVE
09:39AM 9 LAID OUT SHOULD BE ALLOWED.

09:39AM 10 MR. BOSTIC: JUST VERY BRIEFLY.

09:39AM 11 I KEEP COMING BACK TO SITUATIONS WHERE THE COURTS HAVE
09:39AM 12 APPROVED THIS KIND OF CROSS-EXAMINATION ON BIAS. WE'RE SO FAR
09:39AM 13 FROM THOSE SITUATIONS HERE.

09:39AM 14 WE'RE SO FAR FROM THE SITUATION OF A COOPERATOR WHO
09:39AM 15 CREATED OTHER CRIMES OR OTHER CRIMES RELATED TO THE DEFENDANT.

09:39AM 16 I ALSO THINK OF SITUATIONS INVOLVING GIGLIO AND HENTHORN
09:39AM 17 INQUIRIES WHERE THERE MAY HAVE BEEN A COMPLAINT MADE AGAINST A
09:39AM 18 LAW ENFORCEMENT OFFICER OR AN INVESTIGATION OPENED AGAINST THAT
09:39AM 19 INDIVIDUAL.

09:39AM 20 IN THOSE CASES, MY UNDERSTANDING IS THAT WHEN THE
09:39AM 21 INVESTIGATION IS RESOLVED FAVORABLY TO THE OFFICER, OR EVEN
09:39AM 22 WHEN THE INVESTIGATION IS PENDING, THAT EXISTENCE OF THE
09:39AM 23 COMPLAINT OR INVESTIGATION MAY NOT BE DISCOVERABLE OR AT LEAST
09:39AM 24 ADMISSIBLE DURING A TRIAL.

09:39AM 25 HOW IS THAT DIFFERENT FROM THIS CASE?

09:39AM 1 ACCORDING TO MR. COOPERSMITH'S ARGUMENT, THE DEFENSE
09:39AM 2 SHOULD BE ALLOWED TO CROSS-EXAMINE LAW ENFORCEMENT OFFICERS,
09:39AM 3 FOR EXAMPLE, ABOUT UNCONFIRMED COMPLAINTS OR OPEN
09:40AM 4 INVESTIGATIONS THAT HAVEN'T RESOLVED YET, THINGS THAT RESOLVE
09:40AM 5 FAVORABLY TO THEM, ALL BECAUSE THOSE THINGS MIGHT ADD A
09:40AM 6 PRESSURE TO THAT PERSON TO DEFEND THEIR REPUTATION IN THE CASE
09:40AM 7 AT BAR.

09:40AM 8 BUT TO THE EXTENT A WITNESS, ANY WITNESS, OR
09:40AM 9 DR. ROSENDORFF HAS AN INCENTIVE TO MAKE THEMSELVES LOOK GOOD IN
09:40AM 10 CONNECTION WITH A GIVEN CASE, WHAT THEY'RE HERE TO TALK ABOUT,
09:40AM 11 THE DEFENSE CAN EXPLORE THAT AS PERMITTED ON CROSS IN RELATION
09:40AM 12 TO THAT SAME CASE.

09:40AM 13 THERE'S NO NEED FOR THE DEFENSE TO GO INTO UNRELATED
09:40AM 14 MATTERS BASED ON THE ARGUMENT THAT MIGHT COMPOUND OR INCREASE
09:40AM 15 THE WITNESS'S INCENTIVE TO DEFEND THEIR REPUTATION, ESPECIALLY
09:40AM 16 WHERE DOING SO IS SO DANGEROUS AND CREATES THE RISK AND REALLY
09:40AM 17 WOULD LEAD TO THE UNAVOIDABLE AFFECT OF THIS JURY WALKING AWAY
09:40AM 18 THINKING THAT DR. ROSENDORFF WAS INCOMPETENT OR UNETHICAL AS A
09:40AM 19 LAB DIRECTOR BECAUSE OF THE IMPLICATIONS FROM THE DEFENSE'S
09:41AM 20 QUESTION.

09:41AM 21 THE COURT: ANYTHING FURTHER, MR. COOPERSMITH?

09:41AM 22 MR. COOPERSMITH: YOUR HONOR, JUST THAT I DON'T FIND
09:41AM 23 MR. BOSTIC'S PARADE OF HORRIBLES ARGUMENT PERSUASIVE.

09:41AM 24 AS THE COURT ALREADY SAID, WE'RE IN AN UNUSUAL, UNIQUE
09:41AM 25 SITUATION WITH DR. ROSENDORFF HAVING WORKED AT THESE FOUR

09:41AM 1 DIFFERENT COMPANIES, AND SO I THINK EVERY CASE SORT OF STANDS
09:41AM 2 ON ITS OWN FACTS AND THAT'S WHERE WE ARE ON THIS ONE.

09:41AM 3 AND THEN, YOU KNOW, REGARDING WHAT THE JURY MIGHT THINK, I
09:41AM 4 THINK THE POINT IS THAT THE JURY SHOULD KNOW THAT HE'S BEEN
09:41AM 5 INVOLVED WITH COMPANIES THAT HAVE BEEN THE SUBJECT OF THESE
09:41AM 6 FEDERAL CIVIL REGULATORY AND CRIMINAL MATTERS AND THAT THEY CAN
09:41AM 7 CONCLUDE WHATEVER THEY WANT.

09:41AM 8 THAT'S THE POINT. IT IS A JURY DECISION ON HOW MUCH
09:41AM 9 WEIGHT TO PUT ON THE BIAS OF THE WITNESS.

09:41AM 10 THE GOVERNMENT CERTAINLY HAS EVERY ABILITY, ON RECROSS, TO
09:41AM 11 EXPLAIN THAT HE WASN'T CHARGED, HE WASN'T THREATENED TO BE
09:41AM 12 RECHARGED, HE WASN'T GIVEN IMMUNITY. I MEAN, WHATEVER THEY
09:41AM 13 WANT TO DO TO SHOW THAT IT WAS NOT HIS FAULT, THEY CAN
09:42AM 14 CERTAINLY DO IF THEY CHOOSE TO DO THAT.

09:42AM 15 BUT THAT DOESN'T, I THINK, TAKE AWAY FROM THE ABILITY OF
09:42AM 16 THE DEFENSE TO PROBE BIAS.

09:42AM 17 AND THAT'S WHAT JURIES DO. THEY LOOK AT ALL OF THE FACTS
09:42AM 18 AND THE BIAS AND WHAT INCENTIVES THE WITNESS MIGHT HAVE, AND
09:42AM 19 THEY MAKE DECISIONS ACCORDINGLY.

09:42AM 20 SO WITH THAT, WE WILL JUST SUBMIT IT TO THE COURT.

09:42AM 21 THE COURT: OKAY. THANK YOU. AND THANKS FOR THE
09:42AM 22 CONVERSATION THIS MORNING. I SURPRISED YOU BY THAT AND SAID WE
09:42AM 23 WERE GOING TO DO IT FRIDAY, BUT I THOUGHT IT IMPORTANT TO TALK
09:42AM 24 TODAY.

09:42AM 25 I DID USE THE WORD "EXTRAORDINARY," AND I GUESS EVERY CASE

09:42AM 1 IS EXTRAORDINARY, AND THE FACTS ARE PROBABLY MORE UNIQUE THAN
09:42AM 2 EXTRAORDINARY WITH DR. ROSENDORFF AND HIS POST-THERANOS
09:42AM 3 EMPLOYMENT, AND WE KNOW ABOUT THAT WITH THESE THREE COMPANIES.

09:42AM 4 I UNDERSTAND WHAT YOU'RE NOT SAYING IS YOU'RE NOT SAYING
09:42AM 5 THIS IS CHARACTER EVIDENCE, MR. COOPERSMITH, BUT YOU'RE SAYING
09:42AM 6 THAT THE JURY SHOULD BE INFORMED ABOUT THIS NOT FOR CHARACTER,
09:43AM 7 BUT FOR REPUTATIONAL BIAS OF THE WITNESS, AND I'M NOT SURE THAT
09:43AM 8 I CAN -- I UNDERSTAND HOW TO PARSE THOSE THE WAY THAT YOU'VE
09:43AM 9 PHRASED IT.

09:43AM 10 I HAVE CONCERNS THAT IF THIS WERE TO COME IN, IT WOULD
09:43AM 11 CREATE -- UNDER 403, O THINK IT CREATES SIGNIFICANT ISSUES
09:43AM 12 ABOUT WHETHER OR NOT THE PROBATIVE VALUE AS TO THE REPUTATIONAL
09:43AM 13 BIAS THAT YOU SUGGEST AND THE TENSION BETWEEN THAT, AND THE
09:43AM 14 JURY LOOKING AT THIS AS CHARACTER EVIDENCE I THINK IS ALSO
09:43AM 15 UNIQUE, AND PERHAPS EXTRAORDINARY AS WELL, AND THAT'S THE
09:43AM 16 DANGER OF IT.

09:43AM 17 I DO THINK THAT THAT MIX AND THE REASONS THAT YOU WOULD
09:43AM 18 LIKE TO GET IT IN IS REALLY ATTENUATED. I DO SEE SOME
09:43AM 19 ATTENUATION TO IT, HIS INVOLVEMENT WITH THESE THREE COMPANIES.

09:44AM 20 PERKIN ELMER, YOU KNOW, THAT WAS RESOLVED. THE ISSUES
09:44AM 21 THAT WERE PRESENTED IN THE HOLMES CASE WERE RESOLVED, AND I
09:44AM 22 DON'T KNOW WHAT THAT ADDS TO THE REPUTATIONAL BIAS.

09:44AM 23 THE OTHER TWO CASES WHERE THERE WAS SOME INVESTIGATIONS
09:44AM 24 AND CEO'S INDICTED, AND THAT'S -- THERE'S NO INDICATION,
09:44AM 25 NOTWITHSTANDING HE WAS AN EMPLOYEE THERE, HE WAS INVOLVED IN

09:44AM 1 THAT. HE CERTAINLY WASN'T CHARGED OR YOU'D TELL ME IF HE WAS.

09:44AM 2 AND THAT CREATES THE OPPORTUNITY FOR A JURY TO, I THINK,
09:44AM 3 TO SPECULATE AS TO HIM UNTOWARDLY AND UNFAIRLY, AND THAT'S WHAT
09:44AM 4 I TOLD YOUR COLLEAGUE WHAT THIS IS ALL ABOUT, A PURSUIT FOR
09:44AM 5 FAIRNESS.

09:44AM 6 AT THIS POINT I'M GOING TO RESPECTFULLY DECLINE YOUR
09:44AM 7 INVITATION TO PROBE IN THESE MATTERS.

09:45AM 8 I DO THINK THAT IT DOES, AT LEAST TO ME, APPEAR TO BE
09:45AM 9 INAPPROPRIATE CHARACTER EVIDENCE.

09:45AM 10 BIAS IS ALWAYS RELEVANT, AND YOU WILL BE PERMITTED TO
09:45AM 11 PROBE, TO PROBE BIAS AS APPROPRIATE. I'M NOT GOING TO DENY YOU
09:45AM 12 THAT OPPORTUNITY.

09:45AM 13 BUT NOT FOR THE REASONS THAT YOU'VE TOLD ME IN REGARDS TO
09:45AM 14 THE SPECIFIC EMPLOYMENTS HERE. I THINK UNDER 403 THAT IS MORE,
09:45AM 15 AND THE COURT FINDS THAT THAT -- FOR THE REASONS THAT YOU'VE
09:45AM 16 INDICATED, THAT IS MORE PREJUDICIAL THAN PROBATIVE.

09:45AM 17 THERE WILL BE SOME QUESTIONS THAT -- AND I DON'T KNOW WHAT
09:45AM 18 THE WITNESS WILL SAY, BUT HE MAY SAY THINGS THAT WILL PROVIDE
09:45AM 19 YOU THE OPPORTUNITY TO ASK BIAS QUESTIONS.

09:45AM 20 BUT IN THE TOTALITY OF THE CIRCUMSTANCES, HIS POST
09:45AM 21 EMPLOYMENT AT THERANOS AND THE ISSUES THAT CAME UP IN REGARD TO
09:45AM 22 THOSE POST EMPLOYMENT, I SEE THE RELEVANCE OF THAT SPECULATIVE
09:46AM 23 AND ATTENUATED.

09:46AM 24 THE REPUTATIONAL BIAS THAT HE HAS, HE MAY HAVE THAT FOR
09:46AM 25 OTHER REASONS, INCLUDING BEING CONNECTED WITH THERANOS, AND YOU

09:46AM 1 CAN ASK HIM ABOUT THAT AND WHAT WAS THAT AND MAYBE HE HAS
09:46AM 2 CONCERNS ABOUT THAT.

09:46AM 3 BUT FOR NOW I'M GOING TO DENY THE MOTION AS TO THOSE THREE
09:46AM 4 SPECIFIC INSTANCES.

09:46AM 5 MR. COOPERSMITH: I UNDERSTAND, YOUR HONOR.

09:46AM 6 JUST ONE POINT OF CLARIFICATION. AND YOU MIGHT REMEMBER
09:46AM 7 THIS, YOUR HONOR, FROM THE PREVIOUS TRIAL. THERE IS AN ISSUE
09:46AM 8 TOWARDS THE END OF DR. ROSENDORFF'S TIME AT THERANOS WHERE HE
09:46AM 9 IS INTERVIEWING AT THE INVITAE COMPANY, AND I THINK HE MISSES A
09:46AM 10 MEETING BECAUSE HE'S GOING TO AN INTERVIEW.

09:46AM 11 THE COURT: RIGHT.

09:46AM 12 MR. COOPERSMITH: THAT MAY COME UP ON CROSS.

09:46AM 13 THE COURT: RIGHT.

09:46AM 14 MR. COOPERSMITH: SO I WANT TO MAKE SURE THAT AS
09:46AM 15 SOON AS I MENTION THE WORD "INVITAE," THE GOVERNMENT DOESN'T
09:47AM 16 JUMP UP AND TAKE MY HEAD OFF OR SOMETHING.

09:47AM 17 THE COURT: NO. RIGHT.

09:47AM 18 WELL, QUERY WHETHER IT WAS RELEVANT AND WHETHER IT WAS HIS
09:47AM 19 POST EMPLOYMENT IN THIS CASE, AND I DON'T KNOW IF YOU'LL ASK
09:47AM 20 THOSE QUESTIONS OR NOT. WE'LL SEE.

09:47AM 21 MR. COOPERSMITH: BUT THAT'S A DIFFERENT --

09:47AM 22 THE COURT: I RECALL THAT, HE MISSED WORK BECAUSE HE
09:47AM 23 WAS, I THINK -- AT LEAST THAT'S WHAT THE TESTIMONY WAS
09:47AM 24 PREVIOUSLY.

09:47AM 25 MR. COOPERSMITH: RIGHT. AND TO THE EXTENT THAT

09:47AM 1 THAT IS SOMETHING I WANT TO PROBE, I'M NOT SURE YET, BUT I JUST
09:47AM 2 WANTED TO CLARIFY THAT.

09:47AM 3 THE COURT: YES.

09:47AM 4 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:47AM 5 AND JUST FOR WHAT IT'S WORTH, I UNDERSTAND THE COURT'S
09:47AM 6 RULING, AND THE LAST THING I'LL SAY, AND I PROMISE, IF THE
09:47AM 7 EVIDENCE OR THE CROSS-EXAMINATION WAS ALLOWED, WHAT I WOULD DO
09:47AM 8 IN CLOSING IS POINT TO THE BIAS OF THE WITNESS INSTRUCTION AND
09:47AM 9 NOT ANYTHING ABOUT CHARACTER OR ANYTHING LIKE THAT.

09:47AM 10 SO I WOULD CABIN IT THAT WAY IF IT WERE ALLOWED IN. I
09:47AM 11 WILL JUST SAY THAT.

09:47AM 12 BUT I UNDERSTAND THE COURT'S RULING.

09:47AM 13 THE COURT: BUT THAT'S ALWAYS -- IT DOESN'T PRECLUDE
09:47AM 14 YOU FROM TALKING ABOUT THAT, I DON'T THINK. I'M NOT TELLING
09:48AM 15 YOU HOW TO TRY YOUR CASE, FORGIVE ME.

09:48AM 16 BUT THIS WITNESS'S CONNECTION WITH A COMPANY THAT, YOU
09:48AM 17 KNOW, HAS BEEN IN THE PRESS, ET CETERA, THAT IN AND OF ITSELF
09:48AM 18 PRESENTS SOME, AS YOU TALK ABOUT, REPUTATIONAL ISSUES THAT THIS
09:48AM 19 WITNESS MAY HAVE, AND THAT'S FAIR GAME.

09:48AM 20 DO YOU UNDERSTAND WHAT I'M TALKING ABOUT?

09:48AM 21 MR. COOPERSMITH: THAT HE WAS ASSOCIATED WITH
09:48AM 22 THERANOS?

09:48AM 23 THE COURT: RIGHT.

09:48AM 24 MR. COOPERSMITH: YES, YOUR HONOR, I UNDERSTAND THAT
09:48AM 25 THAT WOULD BE FAIR GAME, AND THAT IS DIFFERENT. SO THANK YOU

09:48AM 1 FOR THAT.

09:48AM 2 THE COURT: SURE. SURE.

09:48AM 3 MR. COOPERSMITH: OKAY. YOUR HONOR, JUST TWO QUICK
09:48AM 4 THINGS WHILE I'M HERE. IF I COULD JUST HAND UP THE REVISED
09:48AM 5 INSTRUCTION FROM YESTERDAY'S ARGUMENT.

09:48AM 6 THE COURT: SURE. I'LL RECEIVE IT. WE WON'T TAKE
09:48AM 7 IT UP NOW.

09:48AM 8 MR. COOPERSMITH: YES, YOUR HONOR. JUST TO HAVE THE
09:48AM 9 COURT IN POSSESSION OF IT.

09:48AM 10 (HANDING.)

09:48AM 11 MR. COOPERSMITH: THANK YOU.

09:48AM 12 AND THE LAST THING IS I DON'T KNOW IF THE COURT READ THIS
09:48AM 13 OR REMEMBERS IT, BUT --

09:48AM 14 THE COURT: THANK YOU.

09:48AM 15 MR. COOPERSMITH: OKAY. THE OTHER POINT I WAS GOING
09:48AM 16 TO RAISE IS THAT IN DOCKET 1381, WE FILED A BENCH MEMO WE
09:49AM 17 CALLED IT, AND THE ISSUE WAS ABOUT THE USE OF VIDEO CLIPS AND
09:49AM 18 TRANSCRIPTS AS SUBSTANTIVE EVIDENCE IN CROSS-EXAMINATION.

09:49AM 19 AND WE DON'T KNOW EXACTLY WHAT WILL HAPPEN BECAUSE WE
09:49AM 20 DON'T KNOW YET, OF COURSE, WHETHER DR. ROSENDORFF WILL TESTIFY
09:49AM 21 INCONSISTENTLY TO SOME PRIOR TESTIMONY YET.

09:49AM 22 BUT IF HE DOES, AND YOU KNOW, IT LOOKED LIKE HE DID THAT
09:49AM 23 IN THE PREVIOUS TRIAL, IF THAT HAPPENS, I JUST WANTED TO MAKE
09:49AM 24 SURE THAT WE ALERTED THAT BECAUSE I WANT TO UNDERSTAND THE
09:49AM 25 COURT'S POSITION ON THAT SO WE DON'T WASTE JURY TIME WITH

09:49AM 1 ARGUMENTS OR SIDE-BARS, YOU KNOW, WHILE THE JURY IS IN SESSION.

09:49AM 2 THE COURT: OKAY.

09:49AM 3 MR. COOPERSMITH: I KNOW THAT WE'RE NOW NOT ARGUING

09:49AM 4 THE MOTION THE COURT JUST HEARD ON FRIDAY.

09:49AM 5 I DO HAVE A COLLEAGUE, MS. SCHURICHT, WHO IS SITTING IN

09:49AM 6 THE BACK AND WOULD LIKE TO ADDRESS THE COURT ON THAT POINT.

09:49AM 7 PERHAPS FRIDAY MORNING MIGHT BE A TIME JUST SO WE CAN GET THAT

09:49AM 8 OUT BEFORE THE JURY IS IN SESSION.

09:49AM 9 THE COURT: SURE. OKAY.

09:50AM 10 MR. BOSTIC: ARE WE TALKING ABOUT THE BENCH MEMO

09:50AM 11 THAT DEFENSE COUNSEL JUST REFERENCED?

09:50AM 12 MR. COOPERSMITH: DOCUMENT 1381 ABOUT USE OF VIDEO

09:50AM 13 CLIPS AND SUCH THINGS DURING CROSS-EXAMINATION.

09:50AM 14 MR. BOSTIC: WE WILL BE AVAILABLE TO ADDRESS THAT,

09:50AM 15 YOUR HONOR.

09:50AM 16 THE COURT: OKAY. GREAT. THANK YOU.

09:50AM 17 SO LET'S, LET'S TAKE A BREAK, AND WHAT I'D LIKE TO DO

09:50AM 18 IS -- WHY DON'T WE MEET WITH JUROR NUMBER 8, BUT WHY DON'T WE

09:50AM 19 DO THAT IN THE UNUSED JURY ROOM BEHIND US, AND COUNSEL, A

09:50AM 20 COUPLE OF MEMBERS FROM YOUR TEAM CAN MEET WITH US BACK THERE.

09:50AM 21 WE'LL GIVE A COUPLE OF MINUTES FOR MS. RODRIGUEZ TO SET UP.

09:50AM 22 AND AGAIN, WE'LL TALK WITH THIS JUROR. THIS CONVERSATION

09:50AM 23 WILL UNDOUBTEDLY TOUCH ON SOME PERSONAL MATTERS OF THIS JUROR

09:50AM 24 THAT ARE NOT APPROPRIATE FOR A PUBLIC HEARING, SO WE'LL HAVE

09:50AM 25 THAT CONVERSATION PRIVATELY WITH THE JUROR. PARDON ME.

09:50AM 1 OKAY. LET'S BREAK AND DO THAT, AND THEN WE'LL START
09:50AM 2 TRIAL.
09:51AM 3 (RECESS FROM 9:51 A.M. UNTIL 10:14 A.M.)
09:51AM 4 (SEALED PROCEEDINGS PAGES 3222 - 3233.)
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09:51AM 1 ///

10:17AM 2 (OPEN COURT AT 10:14 A.M.)

10:17AM 3 (RECESS FROM 10:14 A.M. UNTIL 10:22 A.M.)

10:22AM 4 (JURY IN AT 10:22 A.M.)

10:22AM 5 THE COURT: THANK YOU. PLEASE BE SEATED. THANK

10:22AM 6 YOU.

10:22AM 7 GOOD MORNING EVERYONE.

10:22AM 8 THE RECORD SHOULD REFLECT ALL COUNSEL ARE PRESENT,

10:22AM 9 MR. BALWANI IS PRESENT.

10:22AM 10 OUR JURY AND ALTERNATES ARE PRESENT.

10:22AM 11 LADIES AND GENTLEMEN, GOOD MORNING. THANK YOU FOR YOUR

10:22AM 12 PATIENCE. WE HAD TO TAKE CARE OF SOME MATTERS TODAY OUTSIDE OF

10:22AM 13 YOUR PRESENCE.

10:22AM 14 FIRST OF ALL, LET ME ASK YOU THE QUESTION.

10:22AM 15 DURING THE BREAK, HAVE ANY OF YOU HAD CAUSE TO IN ANY WAY

10:22AM 16 LEARN ANYTHING, DISCUSS, SEE, READ, OR IN ANY WAY LEARN

10:22AM 17 ANYTHING ABOUT THIS CASE DURING THE BREAK? IF SO, PLEASE RAISE

10:22AM 18 YOUR HAND.

10:22AM 19 I SEE NO HANDS. THANK YOU AGAIN FOR THAT.

10:22AM 20 LADIES AND GENTLEMEN, I JUST WANTED TO TALK TO YOU ABOUT

10:23AM 21 OUR SCHEDULING. WE HAVE -- FORMER JUROR NUMBER 8 HAS BEEN

10:23AM 22 EXCUSED, AND HE'S BEEN REPLACED BY OUR ALTERNATE, SO WE

10:23AM 23 RECOGNIZE THAT, AND THANK YOU.

10:23AM 24 ALL OF YOU NOW ARE SEATED IN THE BOX NOW. SO IT IS A FULL

10:23AM 25 FLIGHT IN THAT REGARD.

1 WE WILL GO UNTIL 4:00 TODAY. WE'LL BE ABLE TO GO TO 4:00
2 NOTWITHSTANDING OUR LATE, LATE START.

3 AND I ALSO WANT TO TELL YOU THAT, BECAUSE OF SCHEDULING
4 ISSUES, WE'RE GOING TO TAKE A WITNESS OUT OF ORDER. SO
5 MR. JHAVERI WAS TESTIFYING YESTERDAY. WE'RE GOING TO INTERRUPT
6 HIS TESTIMONY AND CALL A NEW WITNESS TODAY, A DIFFERENT
7 WITNESS, WHO WILL TESTIFY TODAY AND PERHAPS THROUGH THE BALANCE
8 OF THIS WEEK WE HOPE.

9 BUT THESE THINGS, THIS IS VERY COMMON. AS YOU MIGHT
10 IMAGINE IN A LENGTHY CASE, SCHEDULING ISSUES DO COME UP AND
11 THESE ISSUES DO ARISE SOMETIMES.

12 SO WE'LL BREAK AND WE'LL INTERRUPT MR. JHAVERI'S
13 TESTIMONY.

14 THE GOVERNMENT HAS ANOTHER WITNESS TO CALL?

15 MR. BOSTIC: YES, YOUR HONOR.

16 THE UNITED STATES CALLS DR. ADAM ROSENDORFF.

17 THE COURT: ALL RIGHT. THANK YOU.

18 SIR, IF YOU WOULD JUST STAND THERE FOR A MOMENT AND FACE
19 OUR COURTROOM DEPUTY.

20 **(GOVERNMENT'S WITNESS, ADAM ROSENDORFF, WAS SWORN.)**

21 THE WITNESS: I DO.

22 THE COURT: ALL RIGHT. PLEASE HAVE A SEAT HERE,
23 SIR. LET ME INVITE YOU TO HAVE A SEAT.

24 MAKE YOURSELF COMFORTABLE. FEEL FREE TO ADJUST THE
25 MICROPHONE AND THE CHAIR AS YOU NEED.

10:25AM 1 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME
10:25AM 2 AND THEN SPELL IT, PLEASE.

10:25AM 3 THE WITNESS: MAY I TAKE OFF MY MASK, YOUR HONOR?

10:25AM 4 THE COURT: YES.

10:25AM 5 THE WITNESS: MY NAME IS ADAM ROSENDORFF. A-D-A-M,
10:25AM 6 R-O-S-E-N-D-O-R-F-F.

10:25AM 7 THE COURT: THANK YOU.

10:25AM 8 COUNSEL.

10:25AM 9 MR. BOSTIC: THANK YOU, YOUR HONOR.

10:25AM 10 **DIRECT EXAMINATION**

10:25AM 11 BY MR. BOSTIC:

10:25AM 12 Q. GOOD MORNING, DR. ROSENDORFF.

10:25AM 13 A. GOOD MORNING.

10:25AM 14 Q. I UNDERSTAND THE COURT HAS AUTHORIZED YOU TO REMOVE YOUR
10:25AM 15 MASK, WHICH IS THE RULE IN THIS COURT FOR WITNESSES WHO ARE
10:25AM 16 FULLY VACCINATED.

10:25AM 17 DO YOU UNDERSTAND THAT?

10:25AM 18 A. YES.

10:25AM 19 Q. WERE YOU AT ONE TIME EMPLOYED BY A COMPANY CALL THERANOS?

10:25AM 20 A. YES.

10:25AM 21 Q. AND WHAT WAS YOUR POSITION WHEN YOU WERE AT THE COMPANY?

10:25AM 22 A. LABORATORY DIRECTOR.

10:25AM 23 Q. AND DO YOU REMEMBER THE APPROXIMATE DATES OF YOUR
10:25AM 24 EMPLOYMENT AT THERANOS?

10:25AM 25 A. I BELIEVE IT WAS APRIL 2013 TO NOVEMBER 2014.

10:26AM 1 Q. AND WHEN YOU LEFT THE COMPANY IN NOVEMBER 2014, WERE YOU
10:26AM 2 TERMINATED OR WERE YOU LAID OFF OR DID YOU QUIT?

10:26AM 3 A. I GAVE THE COMPANY 60 DAY NOTICE VIA EMAIL. I EXPRESSED
10:26AM 4 THANKS FOR THE OPPORTUNITY OF WORKING THERE.

10:26AM 5 TO MY KNOWLEDGE, I QUIT THE COMPANY.

10:26AM 6 Q. WE'LL GO THROUGH YOUR TIME AT THE COMPANY SOMEWHAT
10:26AM 7 CHRONOLOGICALLY, SO WE'LL TALK MORE ABOUT YOUR DEPARTURE LATER.

10:26AM 8 BUT FOR NOW, CAN YOU JUST TELL US IN A COUPLE OF SENTENCES
10:26AM 9 WHY YOU MADE THE DECISION TO RESIGN FROM THERANOS?

10:26AM 10 A. I WAS INITIALLY VERY EXCITED TO WORK AT THE COMPANY. I
10:26AM 11 THOUGHT THERE WAS GREAT PROMISE IN THE FINGERSTICK TECHNOLOGY,
10:26AM 12 ALTHOUGH I WASN'T EXACTLY SURE WHAT THE TECHNOLOGY WAS WHEN I
10:27AM 13 JOINED BECAUSE OF THE SECRECY SURROUNDING THE COMPANY.

10:27AM 14 AS TIME WENT BY, THE FREQUENCY AND SEVERITY OF COMPLAINTS
10:27AM 15 THAT I WAS GETTING FROM CLINICIANS REALLY REACHED A CRESCENDO
10:27AM 16 AND IT GOT TO A POINT WHERE I FELT LIKE MY INTEGRITY AS A
10:27AM 17 PHYSICIAN WAS AT RISK.

10:27AM 18 I WAS ALSO VERY CONCERNED ABOUT THE UNWILLINGNESS OF
10:27AM 19 MANAGEMENT TO CONDUCT PROFICIENCY TESTING AS REQUIRED BY LAW.

10:27AM 20 Q. WE'LL TALK ABOUT THOSE TOPICS SOME MORE IN DETAIL.

10:27AM 21 BUT FIRST, CAN YOU SUMMARIZE FOR US YOUR EDUCATION,
10:27AM 22 BEGINNING WITH UNDERGRADUATE?

10:27AM 23 A. YEAH.

10:27AM 24 I ATTENDED UNDERGRADUATE IN SOUTH AFRICA AT THE UNIVERSITY
10:27AM 25 OF, IT'S A LONG WORD, WIIWATERSRAND. I COULD SPELL IT IF WOULD

10:28AM 1 YOU LIKE. OKAY.

10:28AM 2 I GRADUATED IN '92.

10:28AM 3 I DID PRE-MEDICINE AT COLUMBIA. IN '95 I STARTED MEDICAL
10:28AM 4 SCHOOL AT MOUNT SINAI.

10:28AM 5 I TOOK FIVE YEARS FOR MEDICAL SCHOOL. I TOOK A YEAR OFF
10:28AM 6 AS A HOWARD HUGHES FELLOW TO DO BASIC SCIENCE RESEARCH IN A
10:28AM 7 LABORATORY AT THAT TIME.

10:28AM 8 UPON GRADUATION IN 2000, I STARTED WORKING AS A
10:28AM 9 POST-DOCTORAL FELLOW AT HARVARD MEDICAL SCHOOL IN
10:28AM 10 ELLIOTT KIEFF'S LABORATORY. I DID THAT FOR ABOUT FOUR OR FIVE
10:28AM 11 YEARS.

10:28AM 12 AND AT THE END I DID A RESIDENCY IN CLINICAL PATHOLOGY,
10:28AM 13 OTHERWISE KNOWN AS LABORATORY MEDICINE, FROM 2005 TO 2008.

10:28AM 14 Q. AND CAN I ASK YOU TO DEFINE WHAT A RESIDENCY IS, PLEASE?

10:28AM 15 A. SURE.

10:28AM 16 A RESIDENCY IS SPECIALTY TRAINING THAT, AFTER GRADUATING
10:29AM 17 MEDICAL SCHOOL, THE PATH IS ONE DOES A RESIDENCY TO OBTAIN
10:29AM 18 SPECIALTY TRAINING IN A SPECIFIC FIELD SUCH AS PEDIATRICS,
10:29AM 19 SURGERY, MEDICINE, ET CETERA.

10:29AM 20 Q. AND YOUR RESIDENCY WAS IN CLINICAL PATHOLOGY?

10:29AM 21 A. YES.

10:29AM 22 Q. AFTER YOUR EDUCATION AND RESIDENCY, CAN YOU JUST SUMMARIZE
10:29AM 23 FOR US YOUR EMPLOYMENT HISTORY LEADING UP TO THERANOS?

10:29AM 24 A. IN 2008 I WAS APPOINTED AS AN ASSISTANT PROFESSOR AT THE
10:29AM 25 UNIVERSITY OF PITTSBURGH. MY JOB WAS THERE WAS TO OVERSEE

10:29AM 1 LABORATORY TESTING AT CHILDREN'S HOSPITAL OF PITTSBURGH, WHICH
10:29AM 2 HAD JUST BEEN BUILT AT THE TIME.

10:29AM 3 I ALSO HAD A SMALL BASIC SCIENCE RESEARCH LAB.

10:29AM 4 AND I WAS THERE UNTIL MY EMPLOYMENT AT THERANOS IN
10:29AM 5 CALIFORNIA IN 2013.

10:29AM 6 Q. AND I'M SORRY IF YOU SAID THIS, BUT WHAT WAS YOUR JOB
10:29AM 7 TITLE OR THE NAME OF YOUR POSITION AT THE UNIVERSITY OF
10:30AM 8 PITTSBURGH LABORATORY?

10:30AM 9 A. I WAS THE LABORATORY DIRECTOR THERE.

10:30AM 10 Q. AND DID THAT LABORATORY AT UNIVERSITY OF PITTSBURGH
10:30AM 11 PERFORM CLINICAL TESTING ON BLOOD SAMPLES FOR PATIENTS?

10:30AM 12 A. YES.

10:30AM 13 Q. WE TALKED ABOUT THIS TERM LAB DIRECTOR A COUPLE OF TIMES.
10:30AM 14 COULD YOU TELL US, JUST AT A BASIC LEVEL, WHAT IS A LAB
10:30AM 15 DIRECTOR?

10:30AM 16 A. A LABORATORY DIRECTOR IS REALLY THE PERSON WHO DIRECTS THE
10:30AM 17 LABORATORY. THEY'RE RESPONSIBLE FOR A NUMBER OF AREAS IN THE
10:30AM 18 LAB, BUT SUCH AS TRAINING OF LABORATORY TECHNICIANS; SIGNING
10:30AM 19 OFF ON LAB REPORTS, THE LAB DIRECTOR'S NAME IS ON EVERY REPORT;
10:30AM 20 SIGNING OFF ON QC PROFICIENCY TESTING; VALIDATIONS.

10:30AM 21 REALLY A WHOLE NUMBER OF DUTIES WHICH ARE LAID OUT IN THE
10:31AM 22 FEDERAL CLIA REGULATIONS.

10:31AM 23 BUT WHEN I WORK FOR A COMPANY, THERE ARE OTHER
10:31AM 24 RESPONSIBILITIES THAT YOU MIGHT HAVE TO ASSUME AS WELL.

10:31AM 25 Q. AND TO BE A LAB DIRECTOR LIKE YOU WERE AT THE UNIVERSITY

10:31AM 1 OF PITTSBURGH AND AT THERANOS, ARE THERE SPECIFIC CREDENTIALS
10:31AM 2 OR QUALIFICATIONS THAT ONE HAS TO HAVE?

10:31AM 3 A. YES. THERE'S TWO PATHS TO BE A LAB DIRECTOR.

10:31AM 4 FOR A HIGH COMPLEXITY LABORATORY, YOU EITHER HAVE TO BE AN
10:31AM 5 M.D. OR A PH.D., AND I BELIEVE YOU HAVE TO HAVE AT LEAST TWO
10:31AM 6 YEARS OF EXPERIENCE WORKING IN A HIGH COMPLEXITY LAB.

10:31AM 7 FOR A PH.D., YOU HAVE TO BE SPECIALTY BOARDED BY A BOARD
10:31AM 8 THAT IS RECOGNIZED BY CMS.

10:31AM 9 Q. OKAY. AND WHAT ABOUT THE RESPONSIBILITIES OF A LAB
10:31AM 10 DIRECTOR? FOR EXAMPLE, DOES A LAB DIRECTOR HAVE ANY ROLE IN
10:32AM 11 CONNECTION WITH MONITORING THE ACCURACY AND RELIABILITY OF THE
10:32AM 12 LAB TESTS?

10:32AM 13 A. YES, ABSOLUTELY.

10:32AM 14 Q. AND IN THAT ROLE, DOES A LAB DIRECTOR CONCERN HIM OR
10:32AM 15 HERSELF WITH ACCURACY AND PRECISION?

10:32AM 16 A. YES.

10:32AM 17 Q. AS YOU UNDERSTOOD IT, AS LAB DIRECTOR AT THERANOS, CAN YOU
10:32AM 18 JUST EXPLAIN THE DIFFERENCE BETWEEN THOSE TWO, STARTING WITH
10:32AM 19 ACCURACY.

10:32AM 20 WHAT IS ACCURACY IN THIS CONTEXT?

10:32AM 21 A. ACCURACY IS FORMALLY DEFINED AS THE CLOSENESS OF A
10:32AM 22 LABORATORY RESULT TO THE TRUE RESULT.

10:32AM 23 PRECISION WAS THE OTHER ONE?

10:32AM 24 Q. PRECISION WAS THE OTHER ONE.

10:32AM 25 LET ME ASK YOU ONE QUESTION ABOUT ACCURACY, THOUGH.

10:32AM 1 IS ACCURACY IMPORTANT IN CLINICAL LAB TESTING? AND IF SO,
10:32AM 2 WHY?

10:32AM 3 A. IT'S CRITICAL BECAUSE HEALTH CARE PROVIDERS RELY ON
10:32AM 4 ACCURATE LABORATORY RESULTS TO MAKE MEDICAL DECISIONS.

10:33AM 5 Q. WE'LL GET INTO MORE DETAIL ON THIS LATER, BUT FOR NOW I
10:33AM 6 WANT TO ASK YOU, DURING YOUR TIME AS LABORATORY DIRECTOR AT
10:33AM 7 THERANOS, DID YOU SEE PROBLEMS WITH THE ACCURACY OF THE
10:33AM 8 THERANOS BLOOD TESTS?

10:33AM 9 A. YES, I DID.

10:33AM 10 Q. WE WERE TALKING ABOUT PRECISION ALSO.

10:33AM 11 CAN YOU EXPLAIN WHAT THAT IS AND HOW IT'S DIFFERENT FROM
10:33AM 12 ACCURACY?

10:33AM 13 A. PRECISION IS A PROPERTY OF A LAB TEST WHERE YOU GET -- YOU
10:33AM 14 DO REPEAT TESTING ON ONE SAMPLE, AND YOU LOOK TO SEE HOW CLOSE
10:33AM 15 THE RESULTS ARE TO EACH OTHER, AND IT REALLY GOES TO THE
10:33AM 16 RELIABILITY OF AN ASSAY.

10:33AM 17 THE PRECISION IS MEASURED BY A VARIABLE CALLED THE CV, OR
10:33AM 18 A COEFFICIENT OF VARIABILITY. THE LOWER THE CV, THE MORE
10:33AM 19 PRECISE THE ASSAY IS; IN OTHER WORDS, THE MORE REPRODUCIBLE IT
10:34AM 20 IS. SO PRECISION AND REPRODUCIBILITY ARE THE SAME CONCEPT.

10:34AM 21 Q. AND WHEN IT COMES TO PRECISION OR REPRODUCIBILITY, YOU
10:34AM 22 TALKED ABOUT THAT CV MEASURE. IS THAT JUST A POINT OF PRIDE
10:34AM 23 FOR LABS, OR DOES THAT MATTER FOR CLINICAL PATIENT TESTING?

10:34AM 24 A. NO, IT ABSOLUTELY MATTERS, BECAUSE IF YOU -- THE TOTAL
10:34AM 25 ERROR OF A LABORATORY TEST IS THE SUM OF PRECISION AND

10:34AM 1 ACCURACY, AND SO IF A TEST HAS POOR PRECISION, IT WILL INCREASE
10:34AM 2 THE TOTAL ERROR, THE TOTAL ALLOWABLE ERROR, AND CMS ACTUALLY
10:34AM 3 HAS GUIDELINES AS TO WHAT THE TOTAL ALLOWABLE ERROR IS FOR A
10:34AM 4 NUMBER OF ANALYTES.

10:34AM 5 Q. AND I'LL ASK YOU THE SAME QUESTION THAT I DID FOR
10:34AM 6 ACCURACY, WHICH IS, DURING YOUR TIME AS LABORATORY DIRECTOR AT
10:34AM 7 THERANOS, DID YOU SEE PROBLEMS WITH THE PRECISION OF THE
10:34AM 8 THERANOS TESTS?

10:34AM 9 A. I DID, YES, ABSOLUTELY.

10:34AM 10 Q. DOES THE ROLE OF LAB DIRECTOR, IN YOUR EXPERIENCE, INCLUDE
10:35AM 11 RESPONSIBILITY FOR COMMUNICATIONS WITH DOCTORS AND PATIENTS AS
10:35AM 12 WELL?

10:35AM 13 A. YES, IT DOES.

10:35AM 14 Q. AND DID YOU DO THAT BOTH AT THERANOS AND UNIVERSITY OF
10:35AM 15 PITTSBURGH?

10:35AM 16 A. YES.

10:35AM 17 Q. AND HOW ABOUT RESEARCHING AND DEVELOPING ASSAYS FOR THE
10:35AM 18 LAB TO RUN? DOES THE LAB DIRECTOR PARTICIPATE IN THAT?

10:35AM 19 A. HE OR SHE DOES. IT DEPENDS ON THE LABORATORY. AT
10:35AM 20 PITTSBURGH BY AND LARGE WE USED FDA APPROVED METHODS. THERE
10:35AM 21 WERE A COUPLE OF LABORATORY DEVELOPED TESTS IN BIOCHEMICAL
10:35AM 22 GENETICS THAT WERE UP AND RUNNING, BUT THERE WAS NO NEW TEST
10:35AM 23 DEVELOPMENT REALLY WHILE I WAS THERE, SO I WASN'T INVOLVED IN
10:35AM 24 THE R&D AND TEST DEVELOPMENT PROCESS.

10:35AM 25 AT THERANOS I WAS INVOLVED IN THE TEST DEVELOPMENT

10:35AM 1 PROCESS.

10:35AM 2 Q. AND GENERALLY, WHAT WAS YOUR INVOLVEMENT IN THE ASSAY
10:36AM 3 DEVELOPMENT PROCESS AT THERANOS?

10:36AM 4 A. UM, I HAD TO BASICALLY APPROVE THE TOLERANCES FOR
10:36AM 5 VALIDATION, WHAT CV'S WOULD BE ACCEPTABLE, WHAT ACCURACY WOULD
10:36AM 6 BE ACCEPTABLE, AND GENERALLY TO LOOK OVER THE METHODOLOGY FOR
10:36AM 7 THE VALIDATION.

10:36AM 8 Q. AND YOU USED A TERM, "VALIDATION."
10:36AM 9 WHAT IS TEST VALIDATION IN THIS CONTEXT?

10:36AM 10 A. VALIDATION IS REALLY A SERIES OF PROCEDURE IN THE R&D LAB
10:36AM 11 WHERE YOU'RE TESTING THE TEST ITSELF FOR -- YOU'RE DETERMINING
10:36AM 12 THAT IT MEETS THE CMS CRITERIA FOR A LABORATORY DEVELOPED TEST,
10:36AM 13 AND THERE ARE A NUMBER OF CRITERIA THERE, NOT JUST ACCURACY AND
10:36AM 14 PRECISION.

10:36AM 15 YOU'RE MAKING SURE THAT THE TEST IS APPROPRIATE FOR
10:36AM 16 PATIENT USE BEFORE A SINGLE PATIENT GETS TESTED.

10:37AM 17 Q. AND THAT VALIDATION STEP, IF AN ASSAY IS VALIDATED AND
10:37AM 18 THEN USED ON PATIENTS, IS THERE ANY NEED TO CONTINUE TO MONITOR
10:37AM 19 THE PERFORMANCE AND THE RELIABILITY OF THAT ASSAY GOING
10:37AM 20 FORWARD?

10:37AM 21 A. YES, ABSOLUTELY. VALIDATIONS ARE DONE UNDER IDEAL
10:37AM 22 CONDITIONS AND GENERALLY DO NOT TAKE INTO ACCOUNT PREANALYTIC
10:37AM 23 FACTORS SUCH AS SPECIMEN COLLECTION OR TRANSPORTATION.

10:37AM 24 VALIDATIONS ARE RUN BY R&D SCIENTISTS FOR THE MOST PART
10:37AM 25 WHO DO NOT HAVE ANY PROFESSIONAL RESPONSIBILITY TO REPRESENT

10:37AM 1 DATA ACCURATELY IN THE VALIDATION.

10:37AM 2 SO IT'S ESSENTIAL THAT AFTER THE VALIDATION YOU PERFORM
10:37AM 3 QUALITY CONTROL PROFICIENCY TESTING, YOU KEEP AN EYE OUT FOR
10:37AM 4 WHAT THE DATA IS TELLING YOU, FOR WHAT CLINICIANS ARE TELLING
10:38AM 5 YOU ABOUT DISCREPANCIES, THINGS THAT DON'T MAKE SENSE.

10:38AM 6 Q. THINKING ABOUT YOUR PREVIOUS EXPERIENCE WITH BLOOD TESTING
10:38AM 7 AT THE UNIVERSITY OF PITTSBURGH, CAN YOU GIVE US A SUMMARY OF
10:38AM 8 THE KINDS OF BLOOD ANALYZERS THAT YOU CAME FAMILIAR WITH IN
10:38AM 9 THAT ROLE?

10:38AM 10 A. AT THE UNIVERSITY OF PITTSBURGH WE HAD BECKMAN
10:38AM 11 INSTRUMENTS, I BELIEVE DXC 1600, SOMETHING LIKE THAT, BOTH FOR
10:38AM 12 THE GENERAL CHEMISTRY AND THE IMMUNO ANALYZERS.

10:38AM 13 Q. AND WERE THOSE COMMERCIALY AVAILABLE, THAT IS, PURCHASED
10:38AM 14 FROM A THIRD PARTY COMPANY?

10:38AM 15 A. YES.

10:38AM 16 Q. DID THE LAB AT THE UNIVERSITY OF PITTSBURGH MAKE ANY
10:38AM 17 CHANGES OR MODIFICATIONS TO THE BLOOD TESTS RUN ON THOSE
10:38AM 18 DEVICES?

10:38AM 19 A. NO, THEY DID NOT.

10:38AM 20 Q. HOW ABOUT AT THE UNIVERSITY OF PITTSBURGH, CAN YOU
10:38AM 21 ESTIMATE APPROXIMATELY HOW MANY BLOOD TESTS THE LAB DID DURING
10:39AM 22 YOUR TIME AS LABORATORY DIRECTOR? AND IF IT'S EASIER TO
10:39AM 23 ESTIMATE ON A YEARLY BASIS, YOU CAN DO THAT.

10:39AM 24 A. IT WAS OVER A MILLION TESTS A YEAR.

10:39AM 25 Q. AND WHEN YOU WERE AT UNIVERSITY OF PITTSBURGH, WERE YOU

10:39AM 1 INVOLVED IN THE CONDUCTING OF PROFICIENCY TESTING FOR THOSE
10:39AM 2 TESTS?

10:39AM 3 A. I SIGNED OFF ON THE PROFICIENCY TESTING, YES.

10:39AM 4 Q. HOW ABOUT QUALITY CONTROL? WERE YOU SIMILARLY OVERSEEING
10:39AM 5 QUALITY CONTROL FOR THOSE TESTS?

10:39AM 6 A. YES.

10:39AM 7 Q. FROM THAT AND FROM OVERSEEING THAT LAB, DID YOU GET A
10:39AM 8 GENERAL SENSE OF HOW THOSE COMMON, COMMERCIALY AVAILABLE
10:39AM 9 ANALYZERS PERFORMED ON BLOOD TESTS?

10:39AM 10 A. YES. THE RATE OF QC FAILURE WAS AT MOST 2 OR 3 PERCENT ON
10:39AM 11 A BAD DAY.

10:39AM 12 GO AHEAD, SORRY.

10:40AM 13 Q. THANK YOU.

10:40AM 14 LET'S TALK ABOUT THERANOS SPECIFICALLY. HOW DID YOU FIRST
10:40AM 15 LEARN ABOUT THE COMPANY?

10:40AM 16 A. I WAS -- AS I DISCUSSED PREVIOUSLY, I HAD READ WALTER
10:40AM 17 ISAACSON'S BIOGRAPHY OF STEVE JOBS AND I GOT REALLY EXCITED
10:40AM 18 ABOUT INNOVATION IN SILICON VALLEY, AND I STARTED LOOKING
10:40AM 19 AROUND FOR JOBS WHERE -- THAT HAD A SIGNIFICANT INNOVATION
10:40AM 20 COMPONENT, AND MOST OF THOSE WERE IN SILICON VALLEY.

10:40AM 21 AND THEN I FOUND A POSITION THAT WAS BEING ADVERTISED ON
10:40AM 22 LINKEDIN AT WALTER -- NOT WALTER. BARRY HAMORY WAS, I BELIEVE,
10:40AM 23 THE RECRUITER, AND I GOT IN TOUCH WITH HIM AND THAT'S HOW THAT
10:40AM 24 PROCESS STARTED.

10:40AM 25 Q. AND DID YOU THEN PURSUE THE POSITION AT THERANOS?

10:40AM 1 A. YES.

10:40AM 2 Q. AND DID YOU INTERVIEW FOR THAT JOB?

10:40AM 3 A. YES.

10:40AM 4 Q. WHAT DO YOU REMEMBER ABOUT THE INTERVIEW PROCESS?

10:40AM 5 A. THEY FLEW ME OUT FROM PITTSBURGH. I STAYED AT A HOTEL

10:41AM 6 PRETTY CLOSE TO THE AIRPORT. THEY WANTED ME TO COME TO THE

10:41AM 7 OFFICE AROUND 6:00 P.M. I BELIEVE, WHICH I THOUGHT WAS UNUSUAL

10:41AM 8 THAT THEY WOULD BE HAVING AN INTERVIEW, YOU KNOW, AT 6:00 P.M.,

10:41AM 9 BUT I INTERPRETED THAT AS A SIGN OF DEDICATION OF THE FOLKS

10:41AM 10 THAT WERE THERE THAT WOULD BE WORKING SO LATE.

10:41AM 11 Q. WITH WHOM WERE YOU INTERVIEWING?

10:41AM 12 A. SURE. I INTERVIEWED WITH DANIEL YOUNG, WITH

10:41AM 13 SUNNY BALWANI, AND WITH ELIZABETH HOLMES.

10:41AM 14 Q. AND IN THOSE INTERVIEWS, DID YOU LEARN ABOUT THE

10:41AM 15 TECHNOLOGY OF THE COMPANY OR WHAT THE COMPANY WAS DOING?

10:41AM 16 A. NO, NOTHING WAS DISCLOSED TO ME DURING THOSE INTERVIEWS.

10:41AM 17 Q. WERE YOU EVENTUALLY OFFERED THE JOB AS LABORATORY DIRECTOR

10:41AM 18 AT THERANOS?

10:41AM 19 A. YES.

10:41AM 20 Q. WHAT WAS YOUR UNDERSTANDING OF THE WORK AT THE COMPANY

10:42AM 21 WHEN YOU ACCEPTED THE JOB AS LABORATORY DIRECTOR?

10:42AM 22 A. I HAD READ SOME -- I TRIED TO OBTAIN AS MUCH INFORMATION

10:42AM 23 AS I COULD BEFORE DECIDING TO WORK THERE, AND I HAD READ A

10:42AM 24 NUMBER OF PATENTS THAT SEEMED INTERESTING TO ME INVOLVING

10:42AM 25 ANTIBODY COATED TIPS AND WIRELESS TRANSMISSION OF PATIENT DATA

10:42AM 1 AND MICROFLUIDICS AND ALL KINDS OF PATENTS THAT SEEMED
10:42AM 2 INTERESTING.

10:42AM 3 I BELIEVED AT THE TIME THAT THEY HAD A REALLY CUTTING
10:42AM 4 EDGE, NOVEL TECHNOLOGY THAT WAS GOING TO REVOLUTIONIZE
10:42AM 5 DIAGNOSTICS.

10:42AM 6 Q. AND AT THAT TIME, WAS YOUR UNDERSTANDING BASED ON THE
10:42AM 7 PUBLICLY AVAILABLE INFORMATION THAT YOU HAD BEEN ABLE TO FIND,
10:42AM 8 OR WAS IT BASED ON WHAT MR. BALWANI AND OTHERS HAD TOLD YOU IN
10:42AM 9 THE INTERVIEW PROCESS?

10:42AM 10 A. IT WAS BASED ON INFORMATION THAT I GATHERED FROM THE
10:43AM 11 INTERNET AND AN INTERVIEW WITH MS. HOLMES WITH STANFORD SOON
10:43AM 12 AFTER SHE HAD STARTED THE COMPANY.

10:43AM 13 Q. LET ME ASK YOU A COUPLE OF QUESTIONS ABOUT HOW YOU FIT
10:43AM 14 INTO THE STRUCTURE OF THE COMPANY.

10:43AM 15 FIRST OF ALL, YOUR TITLE WAS LAB DIRECTOR; IS THAT
10:43AM 16 CORRECT?

10:43AM 17 A. CORRECT.

10:43AM 18 Q. WAS THERE ANYONE ELSE AT THE COMPANY DURING YOUR TIME
10:43AM 19 THERE THAT HELD A SIMILAR OR EQUIVALENT LAB DIRECTOR ROLE?

10:43AM 20 A. YES.

10:43AM 21 Q. AND WHO WAS THAT?

10:43AM 22 A. MARK PANDORI.

10:43AM 23 Q. AND HOW DID YOUR JOB OR RESPONSIBILITIES RELATE TO HIS?

10:43AM 24 A. MARK PANDORI HAD SPECIALTY KNOWLEDGE IN INFECTIOUS DISEASE
10:43AM 25 DIAGNOSTICS. HE HAD COME FROM A PUBLIC HEALTH LABORATORY WHERE

10:43AM 1 THEY WERE DOING A LOT OF INFECTIOUS DISEASE.

10:43AM 2 AND FROM -- MY UNDERSTANDING WAS THAT MARK WAS GOING TO BE
10:44AM 3 HEADING UP THE MOLECULAR MICROBIOLOGY SECTION OF THERANOS OR
10:44AM 4 EFFORT AT THERANOS, YEAH.

10:44AM 5 Q. AND BETWEEN YOU AND DR. PANDORI, DID ONE OF YOU OUTRANK
10:44AM 6 THE OTHER? WERE YOU CO-EQUALS?

10:44AM 7 A. SO -- WHOA. I WAS THE LABORATORY OF RECORD ON THE CLIA
10:44AM 8 LICENSE, SO I BELIEVE HIS TITLE WAS CO-LABORATORY DIRECTOR, BUT
10:44AM 9 I DON'T RECALL EXACTLY.

10:44AM 10 Q. WERE THERE OTHER POSITIONS AT THE COMPANY THAT REPORTED TO
10:44AM 11 YOU AS LABORATORY DIRECTOR?

10:44AM 12 A. I WAS NOT TOLD WHEN I STARTED WORKING THERE WHO MY DIRECT
10:44AM 13 REPORTS WOULD BE.

10:44AM 14 Q. THROUGH YOUR WORK AT THE COMPANY, DID YOU COME TO
10:44AM 15 UNDERSTAND WHETHER THERE WAS ANYONE ELSE REPORTING TO YOU AT
10:44AM 16 THE COMPANY.

10:44AM 17 A. MY UNDERSTANDING WAS THAT THE SUPERVISORS WOULD REPORT TO
10:44AM 18 ME.

10:44AM 19 Q. AND WHAT SUPERVISORS ARE WE TALKING ABOUT HERE? I'M NOT
10:45AM 20 ASKING FOR THEIR NAMES, BUT JUST WHAT ROLE DID THEY HAVE IN THE
10:45AM 21 LAB?

10:45AM 22 A. SO THERE WERE TWO TYPES OF SUPERVISORS, THERE WERE
10:45AM 23 TECHNICAL SUPERVISORS AND A GENERAL SUPERVISOR.

10:45AM 24 AND A TECHNICAL SUPERVISOR REALLY OVERSEES THE TECHNICAL
10:45AM 25 FUNCTIONING OF THE LAB, PROFICIENCY TESTING.

10:45AM 1 A GENERAL SUPERVISOR HAS RESPONSIBILITIES, OPERATIONAL
10:45AM 2 RESPONSIBILITIES, BUT BOTH SUPERVISORS DOCUMENT QUALITY
10:45AM 3 EXCEPTIONS OR ERRORS THAT ARE OCCURRING IN THE LAB, OR ANYTHING
10:45AM 4 THAT DOESN'T FOLLOW AN SOP, THE SUPERVISORS ARE RESPONSIBLE FOR
10:45AM 5 RECORDING THAT, AND ALSO FOR IMPLEMENTING REMEDIAL MEASURES TO
10:45AM 6 ENSURE THAT THEY DO NOT RECUR.

10:45AM 7 Q. AND AS LABORATORY DIRECTOR, WERE YOU OVER THE STAFF IN THE
10:45AM 8 LAB WHO WERE ACTUALLY CONDUCTING THE THERANOS BLOOD TESTS?

10:45AM 9 A. I WOULD SAY NO. THE THERANOS PROPRIETARY BLOOD TESTING
10:46AM 10 WAS CONDUCTED IN A LABORATORY CALLED NORMANDY WHICH WAS DOWN IN
10:46AM 11 THE BASEMENT.

10:46AM 12 NISHIT DOSHI WAS THE SITE LEADER THERE ESSENTIALLY.

10:46AM 13 SUNNY BALWANI WAS VERY INVOLVED IN DIRECTING NORMANDY, AND
10:46AM 14 I DON'T FEEL THAT I WAS GIVEN THE AUTHORITY TO DIRECT WHAT WAS
10:46AM 15 GOING ON IN NORMANDY, NO.

10:46AM 16 Q. OKAY. UNDERSTOOD.

10:46AM 17 TECHNICALLY, THOUGH, FROM AN ORGANIZATIONAL CHART
10:46AM 18 PERSPECTIVE, WERE YOU THE LABORATORY DIRECTOR FOR THE LAB,
10:46AM 19 INCLUDING THE NORMANDY PORTION?

10:46AM 20 A. YES.

10:46AM 21 Q. SO WERE YOU A SUPERIOR TO THE STAFF WHO WERE RUNNING THE
10:46AM 22 TESTS IN THAT SECTION OF THE BUSINESS?

10:46AM 23 A. YES.

10:46AM 24 Q. OKAY. YOU MENTIONED MR. BALWANI.

10:46AM 25 WHOM DID YOU REPORT TO WHEN YOU WERE LAB DIRECTOR AT

10:47AM 1 THERANOS?

10:47AM 2 A. MR. BALWANI.

10:47AM 3 Q. AND WHAT WAS HIS JOB TITLE THERE AT THE TIME, IF YOU

10:47AM 4 RECALL?

10:47AM 5 A. PRESIDENT, CHIEF OPERATING OFFICER.

10:47AM 6 Q. YOU MENTIONED THAT YOU OBTAINED AN M.D. DEGREE; IS THAT

10:47AM 7 CORRECT?

10:47AM 8 A. CORRECT.

10:47AM 9 Q. DURING YOUR TIME AS LAB DIRECTOR AT THE COMPANY, ARE YOU

10:47AM 10 AWARE OF ANY OTHER MEDICAL DOCTORS WHO WERE WORKING FULL TIME

10:47AM 11 FOR THERANOS?

10:47AM 12 A. THE ONLY ONE I CAN THINK OF WAS BILL FRISK WHO WAS ON THE

10:47AM 13 BOARD OF DIRECTORS, BUT THAT'S NOT A FULL-TIME POSITION.

10:47AM 14 AND THEN THERE WAS DR. JAIN, I BELIEVE HER NAME WAS, WHO

10:47AM 15 WAS A CONSULTANT, WHO WAS A PHYSICIAN, TOO. SHE CAME IN

10:47AM 16 OCCASIONALLY.

10:47AM 17 Q. DID THERE COME A TIME IN 2013 WHEN THERANOS LAUNCHED ITS

10:47AM 18 TESTING SERVICES TO THE GENERAL PUBLIC?

10:47AM 19 A. YES.

10:47AM 20 Q. AND DO YOU REMEMBER APPROXIMATELY WHEN THAT WAS?

10:47AM 21 A. IT WAS EARLY SEPTEMBER. I BELIEVE IT WAS AROUND

10:48AM 22 SEPTEMBER 9TH.

10:48AM 23 Q. AND DID THERANOS CONTINUE TO OFFER BLOOD TESTING SERVICES

10:48AM 24 TO THE PUBLIC THROUGHOUT THE REST OF YOUR TIME AT THE COMPANY,

10:48AM 25 THAT IS, THROUGH AT LEAST NOVEMBER OF 2014?

10:48AM 1

A. YES.

10:48AM 2

Q. SO AS LABORATORY DIRECTOR, LEADING UP TO THE TIME OF THAT SEPTEMBER 2013 LAUNCH, WHAT WORK WERE YOU DOING?

10:48AM 3

10:48AM 4

AGAIN, THIS IS IN THE WEEKS LEADING UP TO THAT SEPTEMBER LAUNCH.

10:48AM 5

10:48AM 6

A. I WAS WORKING WITH DANIEL YOUNG COMING UP WITH CRITERIA

10:48AM 7

AND METHODOLOGY FOR THE VALIDATIONS. I WAS MAKING SURE THAT

10:48AM 8

SOP'S WERE IN PLACE. I WAS OVERSEEING THE SUPERVISORS, TRYING

10:48AM 9

TO GET TRAINING SQUARED AWAY. THAT KIND OF THING.

10:48AM 10

Q. LET'S TALK ABOUT THE DEVICES THAT WERE USED AT THERANOS

10:48AM 11

FOR BLOOD TESTING.

10:48AM 12

FIRST, ARE YOU FAMILIAR WITH AN ANALYZER CALLED THE

10:49AM 13

EDISON?

10:49AM 14

A. YES.

10:49AM 15

Q. AND WHAT WAS THE EDISON?

10:49AM 16

A. THE EDISON WAS A BLACK BOX ABOUT THE SIZE OF A MACINTOSH

10:49AM 17

COMPUTER.

10:49AM 18

IN ANY EVENT, IT WAS DESIGNED FOR IMMUNOASSAYS. THESE ARE

10:49AM 19

ASSAYS OF SMALL MOLECULES, PROTEINS, HORMONES, ET CETERA.

10:49AM 20

Q. AND DURING YOUR TIME AS LAB DIRECTOR, DID THERANOS USE THE

10:49AM 21

EDISON TO RUN CLINICAL PATIENT SAMPLES?

10:49AM 22

A. YES.

10:49AM 23

Q. AND WERE THERE OTHER THERANOS MANUFACTURED ANALYZERS THAT

10:49AM 24

YOU KNEW OF BESIDES THE EDISON?

10:49AM 25

A. I WAS TOLD THAT THERE WAS SOMETHING CALLED THE MINILAB IN

10:49AM 1 DEVELOPMENT, AND THE 4S IN DEVELOPMENT.

10:49AM 2 Q. AND WERE THOSE DEVICES THAT WERE IN DEVELOPMENT, AS YOU

10:49AM 3 WERE TOLD, EVER ACTUALLY USED IN THE CLINICAL LAB AT THERANOS?

10:50AM 4 A. NOT TO MY KNOWLEDGE.

10:50AM 5 Q. WHY NOT?

10:50AM 6 A. I WAS TOLD BY NUMEROUS PEOPLE THAT THE 4S WAS --

10:50AM 7 MR. COOPERSMITH: OBJECTION, YOUR HONOR. THIS IS A

10:50AM 8 HEARSAY ANSWER.

10:50AM 9 THE COURT: SUSTAINED.

10:50AM 10 BY MR. BOSTIC:

10:50AM 11 Q. DID MR. BALWANI EVER MAKE ANY STATEMENTS TO YOU ABOUT

10:50AM 12 WHETHER THOSE NEXT GENERATION DEVICES WOULD BE USED FOR

10:50AM 13 CLINICAL PATIENT TESTING?

10:50AM 14 A. YES, HE DID.

10:50AM 15 Q. WHAT DID HE SAY TO YOU ABOUT THAT?

10:50AM 16 A. IT WAS AROUND THE SUMMER OF 2013, I WAS SITTING IN HIS

10:50AM 17 OFFICE WITH KERRY ELENITOBA. WHO IS A SUPERVISOR, AND SUNNY

10:50AM 18 SAID THAT THERE WOULD BE A WHOLE ROOM FILLED WITH MINILABS

10:50AM 19 RUNNING TESTING DAY IN AND DAY OUT; THAT THE TECHNOLOGY WAS

10:50AM 20 SUPERIOR TO THE FDA APPROVED TESTS.

10:51AM 21 Q. AND THAT DEVICE THAT MR. BALWANI TOLD YOU WOULD BE RUNNING

10:51AM 22 THOSE TESTS, DID THAT EVER COME TO HAPPEN? WAS THAT DEVICE

10:51AM 23 EVER USED IN A ROOM THAT WAY FOR RUNNING PATIENT TESTS?

10:51AM 24 A. NO, IT DID NOT.

10:51AM 25 Q. YOU MENTIONED THAT YOU WERE INVOLVED IN THE VALIDATION

10:51AM 1 WORK FOR THE THERANOS DERIVED TESTS; IS THAT RIGHT?

10:51AM 2 A. YES.

10:51AM 3 Q. AND DID YOU EVER GET ANY VALIDATION SUBMISSIONS FOR THOSE
10:51AM 4 NEXT GENERATION DEVICES?

10:51AM 5 A. NO, I DID NOT.

10:51AM 6 Q. DID YOU EVER SEE ONE OF THOSE NEXT GENERATION DEVICES IN
10:51AM 7 PERSON AS FAR AS YOU REMEMBER?

10:51AM 8 A. NO, I DID NOT.

10:51AM 9 Q. SO WE'VE COVERED THE IN-HOUSE THERANOS MADE ANALYZERS;
10:51AM 10 CORRECT?

10:51AM 11 DID THERANOS ALSO USE ANALYZERS THAT WERE MADE BY THIRD
10:51AM 12 PARTIES, BY OTHER COMPANIES?

10:51AM 13 A. YES.

10:51AM 14 Q. DID THERANOS USE SOME OF THOSE DEVICES FOR FINGERSTICK
10:52AM 15 TESTING?

10:52AM 16 A. YES.

10:52AM 17 Q. OKAY. CAN YOU TELL US ABOUT THAT CATEGORY OF DEVICES?

10:52AM 18 A. THE CLINICAL CHEMISTRY TESTS RUN ON THE FINGERSTICK WERE
10:52AM 19 RUN ON THE SIEMENS ADVIA INSTRUMENTS THAT HAD BEEN MODIFIED TO
10:52AM 20 RUN SMALL FINGER DROPLETS, SMALL SAMPLES. IT INVOLVED DILUTION
10:52AM 21 OF THE FINGERSTICK PLASMA OR SERUM AND VARIOUS HARDWARE
10:52AM 22 MODIFICATIONS TO THE EDISON -- I'M SORRY, TO THE SIEMENS
10:52AM 23 INSTRUMENT AND MODIFICATIONS TO THE SOFTWARE AND THE WAY THE
10:52AM 24 INSTRUMENT OPERATED.

10:52AM 25 I WON'T GET INTO THE TECHNICAL DETAILS OF THAT.

10:52AM 1 Q. THAT PRACTICE OF USING MODIFIED THIRD PARTY DEVICES FOR
10:52AM 2 TESTS -- WELL, LET ME ASK, WAS THAT USED FOR ACTUAL PATIENT
10:52AM 3 TESTING AT THERANOS?

10:52AM 4 A. YES, IT WAS.

10:52AM 5 Q. AND WHEN DID THAT PRACTICE START, IF YOU REMEMBER?

10:52AM 6 A. I RECALL AT THE TIME OF THE LAUNCH.

10:53AM 7 Q. DID YOU HAVE ANY CONVERSATIONS WITH MR. BALWANI AS TO WHY
10:53AM 8 THE COMPANY WAS USING MODIFIED THIRD PARTY DEVICES FOR PATIENT
10:53AM 9 TESTING?

10:53AM 10 A. NO, I DID NOT.

10:53AM 11 Q. DID YOU EVER GET AN EXPLANATION FROM HIM AS TO WHY THAT
10:53AM 12 WAS HAPPENING?

10:53AM 13 A. NO, I DID NOT.

10:53AM 14 Q. DO YOU KNOW WHETHER MS. HOLMES AND MR. BALWANI APPROVED
10:53AM 15 THE COMPANY'S USE OF THIRD PARTY DEVICES?

10:53AM 16 A. YES, THEY DID.

10:53AM 17 Q. AND WAS THE COMPANY'S USE OF MODIFIED THIRD PARTY DEVICES
10:53AM 18 SOMETHING THAT WAS PUBLIC? SOMETHING THAT COULD BE SHARED
10:53AM 19 OUTSIDE OF THE COMPANY? OR WAS IT KEPT SECRET WITHIN THE
10:53AM 20 COMPANY?

10:53AM 21 A. NO. IT WAS SUBJECT TO STRICT SECRECY. EVEN THE SIEMENS
10:53AM 22 TECHNICAL REPS WHO WOULD COME IN TO SERVICE THE INSTRUMENTS
10:53AM 23 WERE NOT ALLOWED TO SEE ANY EVIDENCE OF MODIFICATION.

10:54AM 24 Q. DID THE COMPANY ALSO USE UNMODIFIED THIRD PARTY DEVICES
10:54AM 25 FOR PATIENT TESTING?

10:54AM 1 A. YES.

10:54AM 2 Q. AND WHEN DID THAT START, IF YOU REMEMBER?

10:54AM 3 A. WHEN I STARTED IN THE LAB, THERANOS WAS DOING TESTING FOR

10:54AM 4 SAFEWAY EMPLOYEES. I BELIEVE IT WAS VENOUS BLOOD ONLY RUN ON

10:54AM 5 THE SIEMENS INSTRUMENT UNMODIFIED, AND THE IMMULITE, SIEMENS

10:54AM 6 IMMULITE UNMODIFIED.

10:54AM 7 Q. AND DID THAT TESTING FOR SAFEWAY HAPPEN BEFORE THE

10:54AM 8 COMMERCIAL LAUNCH IN SEPTEMBER OF 2013?

10:54AM 9 A. YES.

10:54AM 10 Q. DID THAT TESTING FOR SAFEWAY INVOLVE ANY THERANOS SPECIFIC

10:54AM 11 TESTING ANALYZERS?

10:54AM 12 A. NO.

10:54AM 13 Q. DID IT INVOLVE ANY EVEN THERANOS MODIFIED THIRD PARTY

10:54AM 14 ANALYZERS?

10:54AM 15 A. NO.

10:54AM 16 Q. DID YOU HAVE ANY CONVERSATIONS WITH MR. BALWANI ABOUT WHY

10:55AM 17 THE COMPANY WAS USING UNMODIFIED THIRD PARTY DEVICES FOR

10:55AM 18 PATIENT TESTING?

10:55AM 19 A. NO, I DID NOT.

10:55AM 20 Q. WAS THERANOS ABLE TO RUN ALL OF THE TESTS THAT IT WAS

10:55AM 21 OFFERING SOLELY USING THE EDISON?

10:55AM 22 A. NO.

10:55AM 23 Q. WAS THERANOS ABLE TO RUN ALL OF THE TESTS THAT IT WAS

10:55AM 24 OFFERING JUST USING THE EDISON AND THE MODIFIED THIRD PARTY

10:55AM 25 DEVICES?

10:55AM 1 A. NO. NO.

10:55AM 2 I CAN EXPLAIN FURTHER, BUT NO.

10:55AM 3 Q. PLEASE DO.

10:55AM 4 A. OKAY. ON -- FREQUENTLY IF TESTS WERE NOT OFFERED BY

10:55AM 5 THERANOS, VENOUS BLOOD WOULD HAVE TO BE DRAWN. THOSE WOULD BE

10:55AM 6 RUN ON UNMODIFIED FDA APPROVED DEVICES.

10:55AM 7 THERE WERE ALSO SMALLER DEVICES SUCH AS A BLOOD LEAD

10:56AM 8 ANALYZER AND A RUBY -- ABBOTT RUBY HEMATOLOGY ANALYZER THAT WAS

10:56AM 9 USED FOR CBC'S THAT WOULD BE DONE UNMODIFIED.

10:56AM 10 Q. SO ARE WE TALKING ABOUT OTHER THIRD PARTY ANALYZERS,

10:56AM 11 NON-THERANOS DEVICES, BUT SMALLER THAN THE BIG ONES THAT WE

10:56AM 12 HAVE BEEN TALKING ABOUT?

10:56AM 13 A. THE ABBOTT INSTRUMENT WAS PRETTY BIG. IT'S PROBABLY ABOUT

10:56AM 14 THE SAME, MAYBE A LITTLE SMALLER THAN THE SIEMENS ONE.

10:56AM 15 Q. LEADING UP TO THE COMMERCIAL LAUNCH IN SEPTEMBER OF 2013,

10:56AM 16 TELL US ABOUT THE PACE OF THINGS.

10:56AM 17 WERE THINGS MOVING QUICKLY? SLOWLY? WHAT DO YOU REMEMBER

10:56AM 18 ABOUT THAT?

10:56AM 19 A. IT WAS EXTREMELY RUSHED AND HURRIED. THERE WAS IMMENSE

10:57AM 20 PRESSURE PUT ON R&D AND THE LAB TECHS AND MYSELF TO GET THINGS

10:57AM 21 VALIDATED AND GENERATE DATA. THE ADVIA'S WERE RUNNING 24 HOURS

10:57AM 22 A DAY. THE R&D STAFF WAS EXHAUSTED.

10:57AM 23 Q. AND WHAT TIME PERIOD ARE WE TALKING ABOUT HERE? FOR HOW

10:57AM 24 LONG DID YOU FEEL THAT PRESSURE AND DID YOU FEEL LIKE THINGS

10:57AM 25 WERE BEING RUSHED?

10:57AM 1 A. FOR ABOUT TWO TO THREE MONTHS BEFORE THE LAUNCH.

10:57AM 2 Q. AND YOU MENTIONED PRESSURE.

10:57AM 3 WHO WAS IMPOSING THAT PRESSURE? WHERE DID IT COME FROM AT

10:57AM 4 THE COMPANY?

10:57AM 5 A. MR. BALWANI.

10:57AM 6 Q. AND YOU MENTIONED PRESSURE FROM MR. BALWANI TO THE R&D

10:57AM 7 GROUP.

10:57AM 8 WHAT WAS MR. BALWANI'S CONNECTION TO THE R&D GROUP, IF

10:57AM 9 THERE WAS ONE?

10:57AM 10 A. MR. BALWANI WAS REALLY INVOLVED IN OPERATIONS AT ALL

10:58AM 11 LEVELS, BOTH THE CLIA LAB AND R&D. HE WORKED CLOSELY WITH

10:58AM 12 DANIEL YOUNG IN R&D AND OTHERS. HE CONTROLLED WHO COULD GO

10:58AM 13 FROM LDT TO THE CLIA LAB, WHO HAD KEY CARD ACCESS, WHERE

10:58AM 14 RESOURCES WERE ASSIGNED, ET CETERA.

10:58AM 15 Q. HOW ABOUT WHEN IT CAME TO THE CLINICAL LAB? WAS

10:58AM 16 MR. BALWANI INVOLVED IN THE OPERATIONS OF THE CLINICAL LAB?

10:58AM 17 A. YES, HE WAS.

10:58AM 18 Q. HOW SO?

10:58AM 19 A. HE MADE A NUMBER OF SPUR-OF-THE MOMENT DECISIONS TO FIRE

10:58AM 20 VARIOUS PEOPLE THAT -- WITHOUT CONSULTING ME AS THE LABORATORY

10:58AM 21 DIRECTOR.

10:58AM 22 HE WOULD PUT PEOPLE ON TO WORKING ON THE EDISONS VERSUS

10:58AM 23 WORKING ON R&D.

10:59AM 24 HE KEPT AN EYE ON INVENTORY. I REMEMBER THERE WAS A HUGE

10:59AM 25 STINK ABOUT INVENTORY THAT RESULTED IN A CLS BEING FIRED.

10:59AM 1 BUT HE WAS INVOLVED ON A DAILY BASIS ON LABORATORY
10:59AM 2 OPERATIONS, YES.
10:59AM 3 MR. BOSTIC: MAY I APPROACH, YOUR HONOR?
10:59AM 4 THE COURT: YES.
10:59AM 5 MR. BOSTIC: (HANDING.)
10:59AM 6 THE WITNESS: THANK YOU.
10:59AM 7 MR. BOSTIC: (HANDING.)
10:59AM 8 Q. DR. ROSENDORFF, I'VE HANDED YOU A BINDER OF DOCUMENTS, AND
10:59AM 9 I'LL ASK YOU TO TURN TO TAB 3231, PLEASE.
10:59AM 10 LET ME KNOW WHEN YOU'RE THERE.
11:00AM 11 A. I HAVE IT.
11:00AM 12 Q. OKAY. AND IS 3231 AN EMAIL BETWEEN YOU AND OTHER
11:00AM 13 INDIVIDUALS AT THERANOS FROM AUGUST 2013?
11:00AM 14 A. I SEE IT'S FROM NICHOLAS HAASE TO A NUMBER OF INDIVIDUALS.
11:00AM 15 AT LEAST LOOKING AT THE FIRST EMAIL, I'M CC'D ON IT.
11:00AM 16 Q. OKAY. AND, GENERALLY SPEAKING, DOES THIS EMAIL DISCUSS
11:00AM 17 THE STATUS OF ASSAY VALIDATION LEADING UP TO THE LAUNCH?
11:00AM 18 A. YES.
11:00AM 19 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 3231.
11:00AM 20 MR. COOPERSMITH: 802, YOUR HONOR. OBJECTION.
11:00AM 21 MR. BOSTIC: MAY I LAY A FOUNDATION?
11:00AM 22 THE COURT: YES.
11:00AM 23 BY MR. BOSTIC:
11:00AM 24 Q. DR. ROSENDORFF, AROUND THIS TIME PERIOD, LET ME ASK YOU,
11:00AM 25 LOOKING AT THE NAMES ON THESE EMAILS, ARE YOU FAMILIAR WITH THE

11:01AM 1 NAMES ON THESE EMAILS?

11:01AM 2 A. YES, I'M GENERALLY FAMILIAR WITH ALL OF THEM.

11:01AM 3 Q. AND, GENERALLY SPEAKING, WERE THESE INDIVIDUALS INVOLVED
11:01AM 4 IN THE ASSAY VALIDATION WORK LEADING UP TO THE COMMERCIAL
11:01AM 5 LAUNCH?

11:01AM 6 A. YES.

11:01AM 7 Q. AND AROUND THAT TIME PERIOD, DID YOU AND OTHERS AT
11:01AM 8 THERANOS COMMUNICATE BY EMAIL ABOUT THE STATUS OF THINGS WHEN
11:01AM 9 IT CAME TO ASSAY VALIDATION?

11:01AM 10 A. YES.

11:01AM 11 Q. AND WERE THOSE EMAILS USED TO KEEP TRACK OF AND COORDINATE
11:01AM 12 THAT PROCESS OF VALIDATION?

11:01AM 13 A. YES.

11:01AM 14 Q. IN SENDING THOSE EMAILS, WAS IT IMPORTANT FOR THE SENDERS
11:01AM 15 TO BE ACCURATE IN THE DETAILS THAT THEY INCLUDED?

11:01AM 16 A. YES, ESSENTIAL.

11:01AM 17 Q. AND WERE EMAILS LIKE THESE PRESERVED BY THE COMPANY SO
11:01AM 18 THAT THEY COULD BE REFERENCED LATER IF SOMEONE NEEDED TO?

11:01AM 19 A. TO MY KNOWLEDGE, YES.

11:01AM 20 MR. BOSTIC: YOUR HONOR, WE OFFER 3231 AS A BUSINESS
11:01AM 21 RECORD.

11:01AM 22 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

11:02AM 23 (GOVERNMENT'S EXHIBIT 3231 WAS RECEIVED IN EVIDENCE.)

11:02AM 24 BY MR. BOSTIC:

11:02AM 25 Q. LET'S START ON THE SECOND PAGE AND TOP EMAIL.

11:02AM 1 DO YOU SEE THIS IS A MESSAGE FROM MS. HOLMES ON

11:02AM 2 AUGUST 31ST?

11:02AM 3 CAN YOU REMIND US HOW FAR OUT THAT WAS FROM THE EVENTUAL
11:02AM 4 COMMERCIAL LAUNCH OF THE TESTING?

11:02AM 5 A. NINE DAYS, I BELIEVE.

11:02AM 6 Q. OKAY. NINE DAYS BEFORE THE LAUNCH, MS. HOLMES SENDS AN
11:02AM 7 EMAIL TO SEVERAL INDIVIDUALS AT THERANOS, CC'ING MR. BALWANI.

11:02AM 8 DO YOU SEE THAT?

11:02AM 9 A. YES, I DO.

11:02AM 10 Q. AND SHE SAYS, "LET ME KNOW TOTAL NUMBER OF GC MICRO-SAMPLE
11:02AM 11 ASSAYS THAT HAVE COMPLETED VALIDATION AS OF TOMORROW (ADVIA AND
11:02AM 12 OTHER PLATFORMS) ."

11:02AM 13 DO YOU SEE THAT?

11:02AM 14 A. YES, I DO.

11:02AM 15 Q. AND SHE SAYS "GC-MICRO SAMPLE ASSAYS." WHAT DOES THAT
11:02AM 16 REFER TO?

11:02AM 17 A. GC IS SHORT FOR GENERAL CHEMISTRY, AND MICRO-SAMPLES ARE
11:03AM 18 FINGERSTICK AND THOSE WOULD BE RUN ON THE MODIFIED SIEMENS
11:03AM 19 INSTRUMENT.

11:03AM 20 Q. AND WHAT KINDS OF TESTS ARE INCLUDED IN GENERAL CHEMISTRY?
11:03AM 21 CAN YOU GIVE US EXAMPLES OF THE MOST COMMON ONE?

11:03AM 22 A. COMPLETE METABOLIC PANEL, WHICH IS VERY, VERY COMMONLY
11:03AM 23 ORDERED IN MEDICAL SETTINGS.

11:03AM 24 Q. DID YOU SAY COMPLETE METABOLIC PANEL?

11:03AM 25 A. YEAH, COMPLETE METABOLIC PANEL, OR BASIC METABOLIC PANEL.

11:03AM 1 I DON'T RECALL THE ANALYTES ON EACH OF THOSE PANELS, BUT

11:03AM 2 REALLY BREAD AND BUTTER THINGS LIKE SODIUM, POTASSIUM,

11:03AM 3 CHLORIDE, GLUCOSE, BICARBONATE.

11:03AM 4 Q. THANK YOU. LET'S TOOK AT PAGE 1 OF THIS EMAIL, SO MOVING

11:03AM 5 FORWARD IN TIME, TO SEE THE RESPONSE.

11:03AM 6 LET'S ZOOM IN ON THE MESSAGE FROM ROSE EDMONDS.

11:04AM 7 DO YOU SEE ON THE BOTTOM IT INDICATES THAT ROSE EDMONDS

11:04AM 8 WAS A DEVELOPMENT SCIENTIST AT THERANOS?

11:04AM 9 A. YES.

11:04AM 10 Q. AND SHE WRITES BACK TO MS. HOLMES'S QUESTIONS AND SHE

11:04AM 11 SAYS, "AS OF RIGHT NOW, NONE OF OUR ASSAYS ARE COMPLETELY

11:04AM 12 THROUGH VALIDATION INCLUDING CLINICAL SAMPLE TESTING WITH

11:04AM 13 FINGERSTICK."

11:04AM 14 DO YOU SEE THAT?

11:04AM 15 A. YES.

11:04AM 16 Q. AND WHAT DID THAT MEAN IN TERMS OF THE READINESS OF THOSE

11:04AM 17 TESTS TO BE USED ON PATIENTS?

11:04AM 18 A. IT'S A FAIRLY DIRE SITUATION, I WOULD SAY. IT'S NINE DAYS

11:04AM 19 BEFORE THE LAUNCH AND NONE OF THE ASSAYS INTENDED FOR THE

11:04AM 20 LAUNCH ARE THROUGH VALIDATION. THAT DOESN'T REALLY ALLOW MUCH

11:04AM 21 TIME FOR TROUBLESHOOTING OR FINE TUNING.

11:04AM 22 Q. COULD THESE ASSAYS HAVE BEEN USED ON PATIENTS WITHOUT THE

11:04AM 23 DEVELOPMENT PROCESS IN YOUR VIEW?

11:05AM 24 A. NO.

11:05AM 25 Q. THE DATE SET FOR THE LAUNCH, WAS THAT SET BY YOU AS

11:05AM 1 LABORATORY DIRECTOR?

11:05AM 2 A. NO, IT WAS NOT.

11:05AM 3 Q. WHO SET THE LAUNCH DATE AT THERANOS, IF YOU KNOW?

11:05AM 4 A. ELIZABETH AND SUNNY.

11:05AM 5 Q. IF YOU HAD SET THAT TIMETABLE AND THE LAUNCH DATE, WOULD
11:05AM 6 YOU HAVE ALLOWED ADDITIONAL TIME FOR ASSAY VALIDATION?

11:05AM 7 A. ABSOLUTELY.

11:05AM 8 Q. GENERALLY SPEAKING, HOW WERE YOU FEELING ABOUT THE
11:05AM 9 COMPANY'S READINESS FOR A COMMERCIAL LAUNCH IN SEPTEMBER OF
11:05AM 10 2013?

11:05AM 11 A. I WAS UNEASY.

11:05AM 12 Q. AND WHAT WAS MAKING YOU UNEASY AT THAT TIME?

11:05AM 13 A. I FELT LIKE R&D WAS BEING PRESSURED TO PRODUCE DATA THAT
11:05AM 14 INDICATED A CERTAIN RESULT.

11:05AM 15 I WASN'T ENTIRELY SURE IF I SHOULD TRUST WHAT I WAS
11:06AM 16 LOOKING AT, BUT I DECIDED TO TRUST.

11:06AM 17 NONE OF THE TESTING REALLY TOOK INTO ACCOUNT THE
11:06AM 18 PREANALYTIC FACTORS THAT I MENTIONED EARLIER IN MY TESTIMONY,
11:06AM 19 THINGS THAT COULD HAPPEN DURING COLLECTION OR WHEN SAMPLES SAT
11:06AM 20 OUT FOR A LONG TIME, SO I DIDN'T FEEL LIKE THE VALIDATION
11:06AM 21 NECESSARILY REFLECTED THE LIFE OF A SAMPLE.

11:06AM 22 AND I ALSO HAD SOME CONCERNS ABOUT USING VENOUS BLOOD FOR
11:06AM 23 THE PRECISION COMPONENT OF THE VALIDATIONS.

11:06AM 24 Q. AND ON THAT LAST POINT, WHY DID THAT CONCERN YOU?

11:06AM 25 A. BECAUSE WE WOULD BE COLLECTING BLOOD BY FINGERSTICK, WHICH

11:06AM 1 PROBABLY WAS MORE VARIABLE IN TERMS OF ITS COLLECTION.

11:06AM 2 AND THERE WAS A PRACTICAL PROBLEM THERE, WHICH WAS YOU

11:06AM 3 COULDN'T REALLY DO PRECISION FINGERSTICK. YOU WOULD HAVE TO

11:07AM 4 STICK ALL OF THE FINGERS AND TOES OF A VOLUNTEER TO DO

11:07AM 5 PRECISION.

11:07AM 6 Q. YOU TALKED ABOUT PRESSURE TO ACHIEVE CERTAIN RESULTS IN

11:07AM 7 THE VALIDATION WORK.

11:07AM 8 DO YOU RECALL THAT?

11:07AM 9 A. YES.

11:07AM 10 Q. AND WHERE WAS THAT PRESSURE COMING FROM AS YOU PERCEIVED

11:07AM 11 IT?

11:07AM 12 A. FROM SUNNY AND ELIZABETH.

11:07AM 13 Q. CAN I ASK YOU TO LOOK AT TAB 1049 IN YOUR BINDER, PLEASE.

11:07AM 14 A. I HAVE.

11:07AM 15 Q. AND IS 1049 AN EMAIL CHAIN INCLUDING YOU AND MR. BALWANI

11:07AM 16 RELATING TO THE COMPANY'S READINESS FOR LAUNCH?

11:07AM 17 A. SO THE TOP ONE IS FROM SUNNY TO ELIZABETH. IT SAYS, "RE:

11:07AM 18 CONCERNS ABOUT THE LAUNCH."

11:07AM 19 Q. AND EARLIER IN THAT CHAIN, DO YOU SEE THAT IT BEGINS WITH

11:08AM 20 A MESSAGE FROM YOU TO MS. HOLMES AND DANIEL YOUNG?

11:08AM 21 A. YES.

11:08AM 22 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1049.

11:08AM 23 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:08AM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:08AM 25 (GOVERNMENT'S EXHIBIT 1049 WAS RECEIVED IN EVIDENCE.)

11:08AM 1 BY MR. BOSTIC:

11:08AM 2 Q. LET'S START AT THE BOTTOM OF PAGE 1 AND LOOK AT YOUR

11:08AM 3 EMAIL.

11:08AM 4 SO AGAIN, WE'RE AT AUGUST 29TH, 2013, AND LESS THAN

11:08AM 5 TWO WEEKS TO THE COMMERCIAL LAUNCH; RIGHT?

11:08AM 6 A. YES.

11:08AM 7 Q. AND YOU SAY, "HI ELIZABETH,

11:08AM 8 "I HAVE SOME MEDICAL AND OPERATIONAL CONCERNS ABOUT OUR

11:08AM 9 READINESS FOR 9/9."

11:08AM 10 A. YES.

11:08AM 11 Q. AND WHAT PROMPTED YOU TO SEND THIS EMAIL TO MS. HOLMES?

11:08AM 12 A. I DIDN'T FEEL THAT RAISING THESE ISSUES TO MR. BALWANI

11:08AM 13 WOULD HAVE HAD ANY TRACTION, OR I THOUGHT THAT RAISING THESE

11:08AM 14 ISSUES PERHAPS WOULD BE MET WITH HOSTILITY.

11:08AM 15 AND I ALSO FELT THAT ELIZABETH, AS THE CEO OF THE COMPANY,

11:08AM 16 REALLY NEEDED TO KNOW ABOUT THESE ISSUES.

11:09AM 17 Q. LET'S LOOK AT THE ISSUES THAT YOU RAISED.

11:09AM 18 SO AT THE BOTTOM OF THIS PAGE UNDER GLUCOSE, YOU WRITE,

11:09AM 19 "SIGNIFICANT NEGATIVE BIAS EXISTS FOR GLUCOSE."

11:09AM 20 WHAT DID YOU MEAN BY THAT?

11:09AM 21 A. IT MEANS THAT THE READINGS WE ARE GETTING ON THE

11:09AM 22 FINGERSTICK ARE SYSTEMATICALLY LOWER THAN YOU WOULD GET ON

11:09AM 23 VENOUS BLOOD THAT RISES TO A LEVEL OF CLINICAL SIGNIFICANCE.

11:09AM 24 Q. AND WHY WERE YOU CONCERNED ABOUT THAT? WHY WAS THAT A

11:09AM 25 PROBLEM?

11:09AM 1 A. IT'S A PROBLEM BECAUSE, FOR INSTANCE, FASTING BLOOD
11:09AM 2 GLUCOSE IS USED TO DIAGNOSE DIABETES. THERE'S A THRESHOLD OF
11:09AM 3 126 ABOVE WHICH YOU'RE DIAGNOSED WITH DIABETES SO --

11:10AM 4 MR. COOPERSMITH: YOUR HONOR, I'M GOING TO OBJECT
11:10AM 5 AND MOVE TO STRIKE UNDER 702.

11:10AM 6 THE COURT: I'LL -- THE LAST PORTION OF THIS
11:10AM 7 TESTIMONY, LADIES AND GENTLEMEN, REGARDING THOSE MEASUREMENTS
11:10AM 8 IS STRICKEN.

11:10AM 9 YOU CAN LAY A FOUNDATION, IF YOU CAN.

11:10AM 10 MR. BOSTIC: UNDERSTOOD, YOUR HONOR. THANK YOU.

11:10AM 11 Q. DR. ROSENDORFF, GENERALLY SPEAKING, WHAT IS A BIAS IN THE
11:10AM 12 CONTEXT OF LABORATORY TESTING?

11:10AM 13 A. A BIAS IS -- A BIAS IS A MEASURE OF HOW FAR A LABORATORY
11:10AM 14 TEST DEVIATES FROM THE CORRECT VALUE, FROM THE TRUE VALUE.

11:10AM 15 Q. SO DOES THE EXISTENCE OF A BIAS IN A LABORATORY TEST HAVE
11:10AM 16 ANY EFFECT ON THE ACCURACY OR RELIABILITY OF THAT TEST?

11:10AM 17 MR. COOPERSMITH: OBJECTION. 702.

11:10AM 18 THE COURT: CAN YOU LAY A FOUNDATION?

11:10AM 19 MR. BOSTIC: SURE.

11:11AM 20 Q. DR. ROSENDORFF, IN YOUR ROLE AS LABORATORY DIRECTOR AT
11:11AM 21 THERANOS, WAS BIAS SOMETHING THAT MATTERED TO YOU?

11:11AM 22 A. YES.

11:11AM 23 Q. AND WHY DID BIAS MATTER TO YOU AS THERANOS LABORATORY
11:11AM 24 DIRECTOR?

11:11AM 25 A. BIAS --

11:11AM 1 MR. COOPERSMITH: YOUR HONOR, SAME OBJECTION.

11:11AM 2 THE COURT: OVERRULED.

11:11AM 3 YOU CAN ANSWER THE QUESTION.

11:11AM 4 THE WITNESS: SO AS I MENTIONED, TOTAL ALLOWABLE
11:11AM 5 ERROR IS THE SUM OF BIAS AND PRECISION.

11:11AM 6 BIAS IS ANOTHER TERM FOR ACCURACY ESSENTIALLY. IF THERE'S
11:11AM 7 SIGNIFICANT BIAS, THERE'S PROBLEMS WITH ACCURACY.

11:11AM 8 BY MR. BOSTIC:

11:11AM 9 Q. ALL RIGHT. LET'S LOOK AT PAGE 2 IN YOUR EMAIL. ZOOM IN
11:11AM 10 ON THE TOP PARAGRAPH.

11:11AM 11 AND THERE YOU NOTE A DIFFERENCE IN REFERENCE RANGE FOR THE
11:11AM 12 THERANOS CHEMISTRIES VERSUS WHAT YOU WERE SEEING ON THE SIEMENS
11:12AM 13 CHEMISTRIES.

11:12AM 14 DO YOU SEE THAT?

11:12AM 15 A. YES.

11:12AM 16 Q. AND CAN YOU EXPLAIN FOR US WHY THAT WAS A CAUSE FOR
11:12AM 17 CONCERN FOR YOU AT THAT TIME?

11:12AM 18 MR. COOPERSMITH: OBJECTION. 702.

11:12AM 19 THE COURT: OVERRULED.

11:12AM 20 YOU CAN ANSWER THE QUESTION, SIR.

11:12AM 21 BY MR. BOSTIC:

11:12AM 22 Q. WOULD YOU LIKE THE QUESTION AGAIN, DR. ROSENDORFF?

11:12AM 23 A. YES, PLEASE.

11:12AM 24 Q. THE QUESTION IS, THE DIFFERENCE BETWEEN THE RANGES ON THE
11:12AM 25 THERANOS CHEMISTRIES VERSUS THE SIEMENS CHEMISTRIES, WHY DID

11:12AM 1 THAT MATTER TO YOU AS LABORATORY DIRECTOR? WHY WERE YOU

11:12AM 2 RAISING IT TO THE CEO?

11:12AM 3 A. REFERENCE RANGES FOR GLUCOSE ARE EXTREMELY WELL, WELL

11:12AM 4 ESTABLISHED. SO WHATEVER METHOD IS BEING USED, THOSE REFERENCE

11:12AM 5 RANGES SHOULD CLOSELY MATCH THE PUBLISHED GLUCOSE REFERENCE

11:12AM 6 RANGES.

11:12AM 7 IF THEY ARE SIGNIFICANTLY BELOW IT, AS IS THE CASE HERE,

11:12AM 8 THAT INDICATES A PROBLEM WITH THE ASSAY.

11:13AM 9 Q. YOU GO ON TO DISCUSS THE RECOMMENDED MAXIMUM BIAS AND THE

11:13AM 10 CB THAT YOU WERE OBSERVING AT THERANOS.

11:13AM 11 DO YOU SEE THAT?

11:13AM 12 A. YES.

11:13AM 13 Q. AND YOU SAY, "THE TOTAL ALLOWABLE ERROR (PRECISION PLUS

11:13AM 14 BIAS) IS 10 PERCENT, WHICH MEANS THAT OUR ENTIRE ERROR BUDGET

11:13AM 15 HAS ALREADY BEEN SPENT JUST ON PRECISION."

11:13AM 16 CAN YOU EXPLAIN WHAT YOU MEANT BY THAT?

11:13AM 17 A. SO TOTAL ALLOWABLE ERROR IS THE SUM OF PRECISION AND BIAS.

11:13AM 18 THE PRECISION IS ALREADY 8 PERCENT, WHICH IS PRETTY CLOSE

11:13AM 19 TO 10 PERCENT. IT'S NOT THE ENTIRE ERROR BUDGET, BUT IT'S

11:13AM 20 PRETTY CLOSE TO IT.

11:13AM 21 SO WE WOULD HAVE FAILED TOTAL ALLOWABLE ERROR JUST BASED

11:13AM 22 ON PRECISION ALONE.

11:13AM 23 Q. AT THE END OF THAT PARAGRAPH, YOU ASK A QUESTION OF THE

11:13AM 24 CEO.

11:13AM 25 YOU SAY, "MAYBE WE NEED TO WORK ON OUR CALIBRATORS OR

11:14AM 1 CHEMISTRY?"

11:14AM 2 DO YOU SEE THAT?

11:14AM 3 A. YES, I DO.

11:14AM 4 Q. WHAT WERE YOU SUGGESTING THERE?

11:14AM 5 A. A BASIC PROBLEM WITH THE CHEMISTRY OF THERANOS METHODS.

11:14AM 6 Q. IN OTHER WORDS, THIS WOULD BE GOING BACK TO THE DRAWING

11:14AM 7 BOARD IN A SENSE?

11:14AM 8 A. EXACTLY.

11:14AM 9 Q. LET'S LOOK FURTHER DOWN THE SAME PAGE UNDER SODIUM.

11:14AM 10 YOU WRITE, "I NOTICED FOR ONE OF THE DEMOS A FEW PATIENTS

11:14AM 11 HAD SODIUM VALUES IN THE 120'S, WHEREAS 99 PERCENT OF HEALTHY

11:14AM 12 PATIENTS SHOULD HAVE HAD SODIUMS BETWEEN 135-145?"

11:14AM 13 DO YOU SEE THAT?

11:14AM 14 A. YES.

11:14AM 15 Q. AND CAN YOU EXPLAIN WHAT THIS MEANS AND WHY YOU FELT THIS

11:14AM 16 WAS WORTH RAISING TO MS. HOLMES?

11:14AM 17 A. IF A PATIENT TRULY HAS SODIUM IN THE 120'S, IT WOULD

11:14AM 18 RESULT IN THEIR BRAIN SWELLING, DELIRIUM. THAT'S A LIFE

11:14AM 19 THREATENING SITUATION.

11:14AM 20 Q. YOU SEEM TO BE REFERENCING A RELATIVELY SMALL NUMBER OF

11:15AM 21 RESULTS THAT YOU HAD SEEN IN THE COMPANY; IS THAT CORRECT?

11:15AM 22 A. OH, YOU'RE REFERRING TO A FEW PATIENTS IN THE DEMOS.

11:15AM 23 Q. YES.

11:15AM 24 A. YES.

11:15AM 25 Q. AS LABORATORY DIRECTOR, CAN INDIVIDUAL PROBLEMATIC RESULTS

11:15AM 1 ALERT YOU TO PROBLEMS ABOUT THE ACCURACY OF A BLOOD ASSAY?

11:15AM 2 A. YES.

11:15AM 3 MR. COOPERSMITH: OBJECTION. 702. MOVE TO STRIKE.

11:15AM 4 THE COURT: OVERRULED. THE ANSWER WILL REMAIN.

11:15AM 5 BY MR. BOSTIC:

11:15AM 6 Q. LET'S LOOK AT HOW YOU END THIS MESSAGE.

11:15AM 7 IN THE BOTTOM PARAGRAPH YOU WRITE, "I WOULD LIKE US TO BE
11:15AM 8 THE BEST THAT WE CAN BE. A FEW MORE WEEKS TO SORT THROUGH
11:15AM 9 THESE MEDICAL AND LOGISTICAL ISSUES, AND GETTING THE PROPER
11:15AM 10 LEVEL OF TRAINING AND STAFFING WOULD HELP US TREMENDOUSLY."

11:15AM 11 WHAT WERE YOU ASKING FOR HERE?

11:15AM 12 A. I WAS ASKING FOR MORE TIME TO MAKE SURE THAT THE ASSAYS
11:15AM 13 WERE MEDICALLY -- OF MEDICAL VALUE, AND THAT THERE WAS THE
11:16AM 14 RIGHT LEVEL OF TRAINING AND STAFFING IN THE LABORATORY TO RUN
11:16AM 15 THOSE TESTS.

11:16AM 16 Q. IN OTHER WORDS, WERE YOU ASKING TO DELAY THE COMMERCIAL
11:16AM 17 LAUNCH OF THE COMPANY'S TESTING?

11:16AM 18 A. CORRECT.

11:16AM 19 Q. WAS THAT A REQUEST THAT YOU MADE LIGHTLY?

11:16AM 20 A. NO, NOT AT ALL.

11:16AM 21 Q. WHY DID YOU THINK IT WAS NECESSARY TO MAKE THAT REQUEST?

11:16AM 22 A. IN THE INTEREST OF NOT HARMING PATIENTS.

11:16AM 23 Q. BETWEEN MS. HOLMES AND MR. BALWANI, DURING YOUR TIME AT
11:16AM 24 THE COMPANY, WHO WAS MOST INVOLVED IN THE RUNNING AND
11:16AM 25 OPERATIONS OF THE CLINICAL LAB?

11:16AM 1 A. MR. BALWANI.

11:16AM 2 Q. YOU SENT THIS EMAIL -- WELL, LET'S GO BACK TO PAGE 1 OF

11:16AM 3 THIS EMAIL AND ZOOM IN ON THE HEADER OF YOUR MESSAGE.

11:16AM 4 YOU SENT THIS TO MS. HOLMES AND DANIEL YOUNG.

11:16AM 5 DO YOU SEE THAT?

11:16AM 6 A. YES, I DID.

11:16AM 7 Q. WHY DID YOU NOT INCLUDE MR. BALWANI ON THIS EMAIL ABOUT

11:17AM 8 YOUR CONCERNS?

11:17AM 9 A. WHEN I RAISED CONCERNS TO MR. BALWANI, HE WOULD -- THERE

11:17AM 10 WOULD BE ONE OF TWO RESPONSES. HE WOULD EITHER CHALLENGE ME

11:17AM 11 THAT THERE WEREN'T REAL CONCERNS, OR HE WOULD DEFLECT TO

11:17AM 12 MR. YOUNG.

11:17AM 13 THERE WAS A THIRD OPTION WHERE HE WOULD SAY THAT HE WOULD

11:17AM 14 ADDRESS THEM, HE WOULD LOOK INTO THEM AND ADDRESS IT.

11:17AM 15 Q. AND HAD THAT BEEN YOUR EXPERIENCE WITH MR. BALWANI WHEN

11:17AM 16 YOU HAD RAISED CONCERNS PRIOR TO SENDING THIS EMAIL IN LATE

11:17AM 17 AUGUST 2013?

11:17AM 18 A. YES.

11:17AM 19 Q. LET'S LOOK AT THE TOP HALF OF THIS PAGE. A LITTLE FURTHER

11:17AM 20 DOWN, PLEASE. LET'S JUST INCLUDE THE WHOLE TOP HALF.

11:17AM 21 PERFECT.

11:17AM 22 DR. ROSENDORFF, DO YOU SEE THAT MS. HOLMES THEN FORWARDED

11:17AM 23 YOUR EMAIL TO MR. BALWANI ON THAT SAME DAY?

11:17AM 24 A. YES.

11:17AM 25 Q. AND DO YOU SEE THEN MR. BALWANI'S RESPONSE? HE SAYS, "WE

11:18AM 1 WILL TALK TO HIM."

11:18AM 2 A. YES.

11:18AM 3 Q. DO YOU REMEMBER A CONVERSATION WITH MR. BALWANI ABOUT YOUR

11:18AM 4 CONCERNS LEADING UP TO THE LAUNCH?

11:18AM 5 A. I DO NOT.

11:18AM 6 Q. MR. BALWANI SAYS, "I ASSUME WE CAN USE SIEMENS CHEMISTRY

11:18AM 7 FOR GLUCOSE AND SODIUM? IF YES THEN WE SHOULD."

11:18AM 8 DO YOU SEE THAT?

11:18AM 9 A. YES.

11:18AM 10 Q. AND DOES THAT MEAN NOT USING THERANOS SPECIFIC TECHNOLOGY?

11:18AM 11 A. YES.

11:18AM 12 Q. OKAY. WE CAN PUT THAT ASIDE.

11:18AM 13 LET ME ASK YOU ABOUT -- WELL, LET ME ASK YOU A SIMPLER

11:18AM 14 QUESTION.

11:18AM 15 WERE YOUR CONCERNS ABOUT THE COMPANY'S READINESS FOR

11:18AM 16 LAUNCH ADDRESSED AND RESOLVED PRIOR TO THE LAUNCH OF TESTING

11:18AM 17 SERVICES AT THERANOS?

11:18AM 18 A. TO SOME EXTENT, YES.

11:18AM 19 Q. WERE THEY RESOLVED COMPLETELY?

11:18AM 20 A. NO.

11:18AM 21 Q. DID YOU LATER DEVELOP ADDITIONAL CONCERNS ABOUT THE

11:18AM 22 TESTING?

11:18AM 23 A. YES.

11:18AM 24 Q. WE SAW A MENTION OF SOME SODIUM RESULTS FROM DEMOS

11:19AM 25 CONDUCTED AT THE COMPANY.

11:19AM 1 DO YOU RECALL THAT?

11:19AM 2 A. YES.

11:19AM 3 Q. GENERALLY, DID YOU HAVE A ROLE IN THE TECHNOLOGY
11:19AM 4 DEMONSTRATIONS THAT WERE DONE AT THERANOS?

11:19AM 5 A. MY ROLE WAS TO REVIEW THE RESULTS WITH DANIEL AFTER THE
11:19AM 6 DEMOS WERE COMPLETED.

11:19AM 7 Q. AND FOR THESE VIP DEMOS, WERE YOU EVER PRESENT AT
11:19AM 8 PRESENTATIONS THAT MR. BALWANI OR MS. HOLMES MADE TO VIP'S
11:19AM 9 WHERE THEY WERE EXPLAINING WHAT THE THERANOS TECHNOLOGY WAS?

11:19AM 10 A. I WAS NOT.

11:19AM 11 Q. OKAY. CAN I ASK YOU TO TURN TO TAB 1491 IN YOUR BINDER,
11:19AM 12 PLEASE.

11:19AM 13 A. I'M THERE.

11:19AM 14 Q. OKAY. AND IS EXHIBIT 1491 AN EMAIL CHAIN THAT INCLUDES
11:20AM 15 YOU AND OTHERS AT THERANOS RELATING TO ONE OF THESE
11:20AM 16 DEMONSTRATIONS?

11:20AM 17 A. YES.

11:20AM 18 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1491.

11:20AM 19 MR. COOPERSMITH: 802, YOUR HONOR. OBJECTION.

11:20AM 20 MR. BOSTIC: I BELIEVE THE BUSINESS RECORD
11:20AM 21 FOUNDATION HAS BEEN LAID THROUGH A PREVIOUS WITNESS, BUT I CAN
11:20AM 22 DO IT AGAIN IF NECESSARY.

11:20AM 23 THE COURT: YOU'RE SEEKING TO ADMIT THIS AS A
11:20AM 24 BUSINESS RECORD?

11:20AM 25 MR. BOSTIC: YES, YOUR HONOR.

11:20AM 1 THE COURT: ANY OBJECTION TO THAT, MR. COOPERSMITH?

11:20AM 2 MR. COOPERSMITH: WHETHER OR NOT THAT IS THE CASE, I
11:20AM 3 DON'T THINK IT'S A BUSINESS RECORD, AND MY OBJECTION STANDS.

11:20AM 4 THE COURT: DO YOU -- LET'S DO AN 803(6) FOUNDATION
11:20AM 5 IF YOU CAN.

11:20AM 6 BY MR. BOSTIC:

11:20AM 7 Q. DR. ROSENDORFF, DO YOU RECOGNIZE THE INDIVIDUALS ON THIS
11:20AM 8 EMAIL CHAIN?

11:20AM 9 A. YES, I DO.

11:20AM 10 Q. AND WHEN IT CAME TO THE VIP TESTS AND DEMONSTRATIONS THAT
11:20AM 11 WERE RUN AT THERANOS, WAS EMAIL SIMILARLY USED AS A MECHANISM
11:20AM 12 FOR COORDINATING AND TRACKING THE PROGRESS OF THOSE TESTS?

11:21AM 13 A. YES. APART FROM PHONE CALLS, THAT WAS THE ONLY METHOD,
11:21AM 14 AND FACE TO FACE.

11:21AM 15 Q. THANK YOU.

11:21AM 16 AND IN THOSE EMAILS, WAS IT IMPORTANT FOR THE INDIVIDUALS
11:21AM 17 RELAYING INFORMATION TO DO SO ACCURATELY?

11:21AM 18 A. ABSOLUTELY.

11:21AM 19 Q. AND WERE EMAILS LIKE THESE PRESERVED SO THAT THEY COULD BE
11:21AM 20 REFERENCED LATER?

11:21AM 21 A. YES, TO MY KNOWLEDGE.

11:21AM 22 MR. BOSTIC: YOUR HONOR, WE OFFER 1491.

11:21AM 23 THE COURT: THIS IS ADMITTED UNDER 803(6). IT MAY
11:21AM 24 BE PUBLISHED.

11:21AM 25 (GOVERNMENT'S EXHIBIT 1491 WAS RECEIVED IN EVIDENCE.)

11:21AM 1 BY MR. BOSTIC:

11:21AM 2 Q. AND LET'S START WITH THE BOTTOM OF PAGE 2.

11:21AM 3 AND DO YOU SEE, DR. ROSENDORFF, THAT THIS BEGINS -- OR
11:21AM 4 WE'RE LOOKING AT AN EMAIL FROM SOMEONE NAMED MAX FOSQUE TO
11:21AM 5 OTHERS AT THERANOS?

11:21AM 6 A. YES.

11:21AM 7 Q. AND HE ASKS FOR A FOLLOW-UP ON WHY BRIAN GROSSMAN HAS NOT
11:21AM 8 BEEN RELEASED YET.

11:21AM 9 DO YOU RECOGNIZE THAT NAME BY ANY CHANCE?

11:22AM 10 A. I DO RECOGNIZE IT. I DON'T RECALL EXACTLY WHO
11:22AM 11 BRIAN GROSSMAN IS, OR WAS.

11:22AM 12 Q. OKAY. IN MR. FOSQUE'S EMAIL, IN THE LAST SENTENCE HE
11:22AM 13 SAYS, "THIS IS CRITICAL TO GET OUT ASAP."

11:22AM 14 DO YOU SEE THAT?

11:22AM 15 A. YES.

11:22AM 16 Q. AND LET'S LOOK AT THE TOP OF PAGE 2, AND HERE DO YOU SEE A
11:22AM 17 FOLLOW-UP MESSAGE FROM MR. FOSQUE TO YOU AND MARK PANDORI?

11:22AM 18 A. YES.

11:22AM 19 Q. AND HE SAYS, "THIS PATIENT (BRIAN GROSSMAN) IS A VIP,
11:22AM 20 WOULD YOU MIND LOOKING INTO THE SLOW DOWN HERE?"

11:22AM 21 DO YOU SEE THAT?

11:22AM 22 A. YES.

11:22AM 23 Q. HE THEN SAYS, "I BELIEVE H.PYLORI IS RUN ON PREDICATE,
11:22AM 24 PERHAPS THERE IS SOME ISSUE WITH THE MACHINE? LET US KNOW."

11:22AM 25 DO YOU SEE THAT?

11:22AM 1 A. YES.

11:22AM 2 Q. AND WHAT DOES THAT MEAN? WHAT IS H.PYLORI, AND WHAT DOES

11:22AM 3 PREDICATE MEAN IN THIS CONTEXT?

11:22AM 4 A. H.PYLORI IS A BACTERIA THAT IS PRESENT IN THE STOMACH WITH

11:22AM 5 INDIVIDUALS WITH PEPTIC ULCER DISEASE.

11:23AM 6 THE TREATMENT FOR PEPTIC ULCER DISEASE IS TO FIND OUT IF

11:23AM 7 H.PYLORI IS THERE, AND IF IT IS, YOU GIVE ANTIBIOTICS TO GET

11:23AM 8 RID OF IT.

11:23AM 9 Q. AND HOW ABOUT THE MENTION OF THE PREDICATE? IT SAYS "THAT

11:23AM 10 TEST IS RUN ON THE PREDICATE." WHAT DOES THAT MEAN?

11:23AM 11 A. PREDICATE WOULD BE THE FDA APPROVED UNMODIFIED DEVICE.

11:23AM 12 Q. IN OTHER WORDS, A NON-THERANOS DEVICE?

11:23AM 13 A. CORRECT.

11:23AM 14 Q. AND LET'S GO TO THE TOP OF PAGE 1, PLEASE. LET'S LOOK AT

11:23AM 15 THE TOP TWO MESSAGES THERE.

11:23AM 16 DO YOU SEE HERE THAT MR. FOSQUE ASKS IN THE BOTTOM OF THAT

11:23AM 17 EMAIL, "THIS IS ON THE IMMULITE, CORRECT?"

11:23AM 18 A. YES.

11:23AM 19 Q. AND THEN DR. PANDORI RESPONDS AND CONFIRMS THAT YES, IT

11:23AM 20 WAS.

11:23AM 21 DO YOU SEE THAT?

11:23AM 22 A. YES.

11:23AM 23 Q. SO IN OTHER WORDS, THIS VIP'S TEST WAS BEING CONDUCTED NOT

11:23AM 24 ON A THERANOS ANALYZER, BUT ON A THIRD PARTY ANALYZER?

11:24AM 25 A. YES.

11:24AM 1 Q. OKAY. THANK YOU. YOU CAN SET THAT ASIDE.

11:24AM 2 WE TALKED A FEW MINUTES AGO ABOUT THE IMPORTANCE OF
11:24AM 3 ACCURACY IN THE CONTEXT OF CLINICAL LAB TESTING.

11:24AM 4 DO YOU REMEMBER THAT?

11:24AM 5 A. YES.

11:24AM 6 Q. AND IS QC, OR QUALITY CONTROL, PART OF ENSURING ACCURACY
11:24AM 7 FOR LAB TESTING?

11:24AM 8 A. YES.

11:24AM 9 Q. HOW DID QUALITY CONTROL WORK AT THERANOS? WHAT WAS THE
11:24AM 10 STANDARD PRACTICE?

11:24AM 11 A. QUALITY CONTROL ON THE EDISONS WAS RUN USING BIORADS,
11:24AM 12 COMMERCIALY AVAILABLE VIALS OF QUALITY CONTROLLED MATERIAL.

11:24AM 13 THE FIRST THING WE DID WAS TO RUN THAT MATERIAL MULTIPLE
11:24AM 14 TIMES TO ESTABLISH A QC RANGE, A LOW, A MEDIUM, AND A HIGH QC
11:24AM 15 RANGE.

11:24AM 16 AND THEN EVERY TIME -- I'M SORRY, BEFORE EVERY SHIFT WHEN
11:25AM 17 A PARTICULAR EDISON WAS BEING USED, IT HAD TO PASS QUALITY
11:25AM 18 CONTROL TO BE USED.

11:25AM 19 Q. AND IN PLAIN ENGLISH, WHAT ARE YOU DOING WHEN YOU'RE
11:25AM 20 RUNNING THOSE SAMPLES ON THE EDISON MACHINES FOR QC PURPOSES?

11:25AM 21 A. YOU'RE ENSURING THAT THE MACHINE RETURNS A RESULT THAT IS
11:25AM 22 ACCURATE.

11:25AM 23 Q. AND HOW DOES RUNNING THOSE QC SAMPLES LET YOU CONFIRM
11:25AM 24 THAT?

11:25AM 25 A. THE RESULT YOU GET HAS TO BE WITHIN A PREDEFINED RANGE, A

11:25AM 1 NARROW ENOUGH RANGE THAT YOU'RE REASSURED THAT WHEN YOU GO AND
11:25AM 2 TEST PATIENT SAMPLES, THAT THAT RESULT IS GOING TO BE ACCURATE.
11:25AM 3 Q. AND IS THE CORRECT RESULT FOR THOSE SAMPLES KNOWN PRIOR TO
11:25AM 4 RUNNING THE TEST?
11:25AM 5 A. THERE ARE RANGES THAT ARE SUPPLIED BY THE MANUFACTURER,
11:25AM 6 AND THEN AS I MENTIONED, WE ESTABLISHED OUR OWN RANGES.
11:25AM 7 Q. WHAT WOULD HAPPEN IF, DURING THE QUALITY CONTROL CHECK, AN
11:26AM 8 ANALYZER FAILED TO RETURN THE CORRECT ANSWER FOR A SAMPLE?
11:26AM 9 A. THE FIRST -- SO ALL LEVELS HAVE TO PASS. THE FIRST STEP
11:26AM 10 IS YOU RUN THE QC MATERIAL AGAIN.
11:26AM 11 IF IT FAILS AGAIN, YOU HAVE TO RECALIBRATE THE INSTRUMENT
11:26AM 12 AND THEN RUN THE QC AGAIN.
11:26AM 13 Q. OKAY. WAS THE QUALITY CONTROL PERFORMANCE OF ANALYZERS AT
11:26AM 14 THERANOS A FREQUENT TOPIC OF DISCUSSION DURING YOUR TIME AT THE
11:26AM 15 COMPANY?
11:26AM 16 A. YES.
11:26AM 17 Q. AND DID THAT INCLUDE CONVERSATIONS WITH BOTH MR. BALWANI
11:26AM 18 AND MS. HOLMES?
11:26AM 19 A. I RECALL CONVERSATIONS WITH MS. HOLMES ABOUT QUALITY
11:26AM 20 CONTROL.
11:26AM 21 I DON'T SPECIFICALLY RECALL TALKING TO MR. BALWANI ABOUT
11:26AM 22 QUALITY CONTROL.
11:26AM 23 Q. OKAY. WE'LL LOOK AT SOME DOCUMENTS SHORTLY THAT MIGHT
11:26AM 24 REFRESH YOUR RECOLLECTION ON THAT.
11:26AM 25 A. OKAY.

11:26AM 1 Q. FOR NOW, IF I COULD ASK YOU TO TURN TO TAB 1432 IN YOUR
11:26AM 2 BINDER.

11:27AM 3 A. I HAVE IT.

11:27AM 4 Q. AND IS 1432 AN EMAIL CHAIN BETWEEN YOU AND OTHERS AT THE
11:27AM 5 COMPANY DISCUSSING THIS TOPIC, QUALITY CONTROL FOR THE
11:27AM 6 ANALYZER?

11:27AM 7 A. I BELIEVE SO, YES.

11:27AM 8 Q. AND DURING YOUR TIME AT THE COMPANY, WAS EMAIL REGULARLY
11:27AM 9 USED TO COORDINATE AND TRACK QUALITY CONTROL?

11:27AM 10 A. YES.

11:27AM 11 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1432.

11:27AM 12 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:27AM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:27AM 14 (GOVERNMENT'S EXHIBIT 1432 WAS RECEIVED IN EVIDENCE.)

11:27AM 15 BY MR. BOSTIC:

11:27AM 16 Q. AND ON 1432, LET'S START WITH PAGE 6. AND IF WE CAN ZOOM
11:28AM 17 IN ON YOUR MESSAGE TO MS. CHEUNG IN THE MIDDLE OF THE PAGE?

11:28AM 18 A. YES.

11:28AM 19 Q. THE SUBJECT HERE IS QC FOR EDISONS.
11:28AM 20 IS THAT QUALITY CONTROL FOR EDISONS?

11:28AM 21 A. YES.

11:28AM 22 Q. AND YOU ASK ERIKA CHEUNG IF SHE HAPPENS TO HAVE THE
11:28AM 23 VITAMIN D RANGES.

11:28AM 24 DO YOU SEE THAT?

11:28AM 25 A. YES.

11:28AM 1 Q. AND LET'S GO TO PAGE 5 AND LET'S LOOK AT YOUR RESPONSE
11:28AM 2 FROM THE INFORMATION THAT YOU RECEIVED AT THE BOTTOM OF THE
11:28AM 3 PAGE.

11:28AM 4 YOU WRITE, "ERIKA,
11:28AM 5 "THE CV AT 18-NANOGRAMS PER MILLILITER IS WAY TOO HIGH."
11:28AM 6 DO YOU SEE THAT?

11:28AM 7 A. YES.

11:28AM 8 Q. YOU SAY, "ACCORDING TO OUR VALIDATIONS IT SHOULD BE AROUND
11:28AM 9 20 PERCENT."

11:28AM 10 CAN YOU EXPLAIN WHAT YOUR REFERENCING THERE MEANS?

11:28AM 11 A. SO FOR THIS PARTICULAR ANALYTE, AND I CAN'T SEE FROM THE
11:29AM 12 EMAILS WHAT THAT ANALYTE IS, BUT WE RAN TWO LEVELS, LEVEL 1 AND
11:29AM 13 LEVEL 2, THAT'S IN THE BOX IN THE MIDDLE OF THE EMAIL, AND THE
11:29AM 14 COEFFICIENT OF VARIATION FOR LEVEL 1 IS 33 PERCENT, THAT'S WHEN
11:29AM 15 YOU MEASURE THIS ANALYTE AT 17.7, AND IT'S BASICALLY WAY HIGHER
11:29AM 16 THAN WHAT WE SAW DURING VALIDATION.

11:29AM 17 Q. AND AS LABORATORY DIRECTOR, WHY WAS A HIGH CV CONCERNING
11:29AM 18 TO YOU?

11:29AM 19 A. IT GOES DIRECTLY TO THE RELIABILITY OF THE ASSAY.

11:29AM 20 Q. DOES A HIGH CV MAKE IT MORE OR LESS RELIABLE?

11:29AM 21 A. LESS.

11:29AM 22 Q. AND YOU KNOW THAT ACCORDING TO VALIDATIONS IT SHOULD BE
11:29AM 23 AROUND 20 PERCENT.

11:29AM 24 WAS THIS A UNIQUE SITUATION DURING YOUR TIME AT THERANOS,
11:30AM 25 SEEING THE PERFORMANCE OF AN ASSAY GET WORSE AT THE VALIDATION

11:30AM 1 STAGE?

11:30AM 2 A. YES.

11:30AM 3 Q. AND THIS WAS UNIQUE OR SOMETHING THAT YOU SAW MULTIPLE

11:30AM 4 TIMES?

11:30AM 5 A. ROUTINE.

11:30AM 6 Q. OKAY. AND WAS THAT A PROBLEM, THE EXPERIENCE OF AN ASSAY

11:30AM 7 PERFORMING WORSE AFTER THE VALIDATION STAGE?

11:30AM 8 A. ABSOLUTELY.

11:30AM 9 Q. AND WHY WAS THAT A PROBLEM?

11:30AM 10 A. IT BASICALLY INDICATED TO ME THAT THE VALIDATION DATA WAS

11:30AM 11 NOT A REASONABLE OR TRUE REPRESENTATION OF HOW THE TEST

11:30AM 12 ACTUALLY RAN ON REAL PATIENT SAMPLES OR IN PRODUCTION REALLY.

11:30AM 13 Q. LET'S GO TO PAGE 3 IN THIS EMAIL CHAIN. AND LET'S ZOOM IN

11:30AM 14 ON THE BOTTOM OF THE PAGE.

11:30AM 15 WE SEE HERE THAT YOU'RE RECEIVING AN EMAIL HERE THAT SAYS,

11:31AM 16 "THE CV'S ARE HIGH BETWEEN DEVICES."

11:31AM 17 DO YOU SEE THAT?

11:31AM 18 A. YES.

11:31AM 19 Q. AND THEN IT SAYS, "SINCE WE ARE ALLOWED TO REMOVE 2 DATA

11:31AM 20 POINTS FROM 6, I HAVE ATTEMPTED TO DO THAT WITH BOTH THE LEVEL

11:31AM 21 1 AND 2 DATA AND IT IMPROVES THINGS."

11:31AM 22 DO YOU SEE THAT?

11:31AM 23 A. YES.

11:31AM 24 Q. AND COULD YOU TELL US WHAT THIS IS REFERRING TO?

11:31AM 25 A. SO AT THIS POINT IN TIME, THREE INSTRUMENTS, THREE EDISONS

11:31AM 1 WOULD BE USED TO DO A SINGLE TEST. THAT WOULD INVOLVE THREE
11:31AM 2 CARTRIDGES, AND EACH CARTRIDGE HAS TWO DATA POINTS, SO YOU GET
11:31AM 3 SIX DATA POINTS. AND THE PRACTICE AT THE TIME WAS TO ALLOW TWO
11:31AM 4 DATA POINTS TO BE REMOVED OUT OF THE SIX.

11:32AM 5 HOWEVER, THERE WAS NO ALGORITHM FOR IT AND THERE WASN'T
11:32AM 6 ANY SOP.

11:32AM 7 Q. OKAY. WHEN YOU TALK ABOUT THREE DEVICES BEING USED TO RUN
11:32AM 8 ONE TEST, DOES THAT MEAN THAT IF A PATIENT NEEDED MULTIPLE
11:32AM 9 ASSAYS RUN BY THE EDISON, THEN MULTIPLE GROUPS OF THREE DEVICES
11:32AM 10 WOULD BE NEEDED TO SERVICE THAT ONE PATIENT'S TEST?

11:32AM 11 A. CORRECT.

11:32AM 12 Q. LET'S LOOK UP AT THE TOP OF PAGE 3.

11:32AM 13 AND YOU ASK A QUESTION HERE. YOU ASK, "IN CONSIDERING
11:32AM 14 QC" -- I'M SORRY, THIS IS AT THE BOTTOM OF THE EMAIL, "IF THE
11:32AM 15 CV'S ARE VERY HIGH OR THE RANGES OVERLAP, WHICH 2 DATA POINTS
11:33AM 16 (WHICH 1 OUT OF 3 CARTRIDGES) SHOULD WE REMOVE FROM THE DATA
11:33AM 17 SET FOR QC GOING FORWARD? IS THERE A PROTOCOL FOR THIS?"

11:33AM 18 DO YOU SEE THAT?

11:33AM 19 A. YES.

11:33AM 20 Q. AND LET'S LOOK AT PAGE 2 AND ZOOM IN ON THE TEXT OF THE
11:33AM 21 EMAIL THERE WHERE SHARADA TELLS YOU, "I BELIEVE AN ALGORITHM
11:33AM 22 FOR OUTLIER REMOVAL HAS BEEN INCORPORATED IN THE SOFTWARE APP
11:33AM 23 PROCESS."

11:33AM 24 DO YOU SEE THAT?

11:33AM 25 A. YES.

11:33AM 1 Q. AND LET'S GO TO PAGE 1 AND ZOOM IN ON THE TEXT IN THE
11:33AM 2 MIDDLE OF THE PAGE.

11:33AM 3 DO YOU SEE THERE WHERE MS. SIVARAMAN SAYS, "AT THIS TIME
11:33AM 4 OUR OUTLIER REMOVAL PROCEDURE IS MANUAL"?

11:33AM 5 A. YES.

11:33AM 6 Q. AS LABORATORY DIRECTOR, WERE YOU AWARE OF ANY STATISTICAL
11:33AM 7 OR MATHEMATICAL PROCESS THAT THERANOS USED TO REMOVE AND
11:34AM 8 IDENTIFY OUTLIERS?

11:34AM 9 A. NO. I REPEATEDLY ASKED DANIEL YOUNG ABOUT THIS, BUT I
11:34AM 10 WASN'T AWARE OF A STATISTICAL METHOD THAT WAS BEING USED, NO.

11:34AM 11 Q. YOU TESTIFIED EARLIER ABOUT THE OTHER KINDS OF BLOOD
11:34AM 12 ANALYZERS THAT YOU WORKED WITH.

11:34AM 13 DO YOU REMEMBER THAT?

11:34AM 14 A. YES.

11:34AM 15 Q. AND YOU ALSO WORKED WITH THIRD PARTY BLOOD ANALYZERS; IS
11:34AM 16 THAT RIGHT?

11:34AM 17 A. YES.

11:34AM 18 Q. FOR THOSE OTHER DEVICES, DO YOU KNOW OF ANY THAT ARE
11:34AM 19 REQUIRED TO BE OPERATED IN GROUPS WHERE MULTIPLE ANALYZERS ARE
11:34AM 20 REQUIRED TO RUN A SINGLE TEST?

11:34AM 21 A. NO.

11:34AM 22 I JUST WANT TO ADD THAT ONE OF THE JUSTIFICATIONS THAT I
11:34AM 23 WAS GIVEN FOR REMOVING THESE OUTLIERS WAS THAT THERE WOULD BE
11:34AM 24 SO-CALLED DARK, D-A-R-K, COUNTS, WHICH IS WHERE A TIP BASICALLY
11:35AM 25 DOESN'T WORK. YOU GET A VERY, VERY LOW VALUE.

11:35AM 1 Q. AND IN YOUR EXPERIENCE, THOUGH, WAS THIS PRACTICE OF
11:35AM 2 IGNORING DATA, REMOVING OUTLIERS, LIMITED ONLY TO CASES WHERE
11:35AM 3 THERE WERE DARK COUNTS?

11:35AM 4 A. NO.

11:35AM 5 Q. LET'S LOOK AT THE TOP MESSAGE ON THIS PAGE TO WRAP UP THIS
11:35AM 6 EXHIBIT.

11:35AM 7 YOU RESPOND TO SHARADA SIVARAMAN AND YOU SAID, "YES, I
11:35AM 8 AGREE THE WITHIN-INSTRUMENT PRECISION IS GOOD BUT THE BETWEEN
11:35AM 9 INSTRUMENT PRECISION IS NOT."

11:35AM 10 WHAT DOES THAT MEAN IN PLAIN LANGUAGE?

11:35AM 11 A. IT MEANS THAT IF YOU DO REPEAT MEASUREMENTS ON ONE
11:35AM 12 INSTRUMENT, WITHIN ONE INSTRUMENT, THE PRECISION IS MUCH BETTER
11:36AM 13 THAN WHEN YOU COMPARE THE RESULTS YOU GET ACROSS TWO OR MORE
11:36AM 14 INSTRUMENTS.

11:36AM 15 Q. AND WHEN YOU SAY "TWO OR MORE INSTRUMENTS," ARE WE TALKING
11:36AM 16 ABOUT MULTIPLE EDISONS?

11:36AM 17 A. YES.

11:36AM 18 Q. SO THE EDISONS WERE DISAGREEING WITH EACH OTHER; IS THAT
11:36AM 19 RIGHT?

11:36AM 20 A. YES.

11:36AM 21 Q. AND YOU SAY IN YOUR EMAIL, "THIS MIGHT BE A MANUFACTURING
11:36AM 22 ISSUE."

11:36AM 23 DO YOU SEE THAT?

11:36AM 24 A. YES.

11:36AM 25 Q. AND WHO IS MANUFACTURING THESE DEVICES AND REAGENTS?

11:36AM 1 A. THERANOS IN THE NEWARK FACILITY.

11:36AM 2 Q. OKAY. WE CAN PUT THAT ASIDE.

11:36AM 3 YOUR HONOR, I'D LIKE TO SHOW EXHIBIT 1633. I BELIEVE IT'S

11:36AM 4 PRE-ADMITTED.

11:36AM 5 MAY WE PUBLISH?

11:36AM 6 THE COURT: CERTAINLY.

11:36AM 7 AND, LADIES AND GENTLEMEN, WHILE WE DO THAT, WHY DON'T WE

11:36AM 8 TAKE A STANDING BREAK AND STRETCH IF YOU WOULD LIKE FOR JUST A

11:36AM 9 MOMENT.

11:36AM 10 (STRETCHING.)

11:37AM 11 THE COURT: YOU TOO, DOCTOR. FEEL FREE.

11:37AM 12 (STRETCHING.)

11:37AM 13 THE COURT: ALL RIGHT. THANK YOU.

11:37AM 14 AND IT'S 1633?

11:37AM 15 MR. BOSTIC: 1633.

11:37AM 16 THE COURT: THANK YOU.

11:37AM 17 BY MR. BOSTIC:

11:37AM 18 Q. OKAY. DR. ROSENDORFF, DO YOU SEE WHAT HAS BEEN MARKED AS

11:37AM 19 1633 ON THE SCREEN IN FRONT OF YOU?

11:37AM 20 A. YES.

11:37AM 21 Q. AND DO YOU SEE THAT THIS IS AN EMAIL FROM LANGLEY GEE TO

11:37AM 22 YOU, MARK PANDORI, AND OTHERS AT THERANOS WITH THE SUBJECT LINE

11:37AM 23 FAILED QC?

11:37AM 24 A. YES.

11:37AM 25 Q. AND HE WRITES TO MARK AND SAYS, "THE OTHER DAY YOU ASKED

11:37AM 1 FOR A NUMBER OF FAILED QC ELISA RUNS. FOR MARCH, 26 PERCENT
11:37AM 2 RUNS FAILED."

11:38AM 3 DO YOU SEE THAT?

11:38AM 4 A. YES.

11:38AM 5 Q. AND LET'S LOOK AT THE NEXT PAGE AND ACTUALLY LOOK AT THAT
11:38AM 6 DATA.

11:38AM 7 AND, DR. ROSENDORFF, CAN YOU EXPLAIN JUST AT A HIGH LEVEL
11:38AM 8 WHAT WE'RE LOOKING AT IN THIS TABLE?

11:38AM 9 A. THIS TABLE REFERS TO QC FAILURES FOR THE EDISON FOR THE
11:38AM 10 MONTH OF MARCH.

11:38AM 11 TWO LEVELS FOR EACH ASSAY ARE REFERENCED, THE LOW LEVEL
11:38AM 12 AND THE HIGH LEVEL.

11:38AM 13 THE TABLE SHOWS THE NUMBER OF QC FAILURES FOR EACH LEVEL
11:38AM 14 BY ASSAY GOING FROM VITAMIN D AT THE TOP TO TST AT THE BOTTOM.

11:38AM 15 THE PERCENTAGE OF FAILURES AS A PERCENTAGE OF ALL OF THE
11:38AM 16 QC RUN FOR THAT ASSAY IS SHOWN IN THE RIGHT COLUMN.

11:38AM 17 AND THEN THE BOTTOM RIGHT YOU'VE GOT AN AVERAGE OF THOSE
11:39AM 18 PERCENTAGE FAILURES ACROSS ALL OF THE ASSAYS.

11:39AM 19 Q. OKAY. AND LET'S LOOK AT A COUPLE OF THOSE.

11:39AM 20 FOR EXAMPLE, FOR VITAMIN D, DO YOU SEE AN 18 PERCENT
11:39AM 21 FAILURE RATE FOR QUALITY CONTROL?

11:39AM 22 A. YES.

11:39AM 23 Q. FOR PSA OR TPSA, THERE'S A 29 PERCENT FAILURE RATE.

11:39AM 24 DO YOU SEE THAT?

11:39AM 25 A. YES.

11:39AM 1 Q. AND WHAT WAS THE TPSA TEST?

11:39AM 2 A. PROSTATE SPECIFIC ANTIGEN. A "T" MEANS TOTAL.

11:39AM 3 Q. AND WHAT IS THAT TEST USED FOR CLINICALLY, IF YOU KNOW

11:39AM 4 FROM BEING A LAB DIRECTOR?

11:39AM 5 A. IT IS A SCREENING TEST FOR PROSTATE CANCER.

11:39AM 6 Q. HOW ABOUT TST? FOR THAT ASSAY WE SEE A FAILURE RATE OF

11:39AM 7 45 PERCENT.

11:39AM 8 DO YOU SEE THAT?

11:39AM 9 A. YES.

11:39AM 10 Q. AND WHAT IS THE TST?

11:39AM 11 A. TESTOSTERONE.

11:39AM 12 Q. AND HOW IS THAT USED CLINICALLY?

11:39AM 13 A. TESTOSTERONE IS REALLY ONE OF THESE VOGUE-ISH ANALYTES.

11:40AM 14 IT'S IN VOGUE AT THE MOMENT. MEN WHO FEEL DECREASED LIBIDO,

11:40AM 15 ENERGY, LIKE TO HAVE THEIR TESTOSTERONE MEASURED SO THEY CAN

11:40AM 16 SUPPLEMENT THAT.

11:40AM 17 Q. IS IT RELEVANT TO SOME MEDICAL CONDITIONS EXPERIENCED BY

11:40AM 18 FEMALE PATIENTS?

11:40AM 19 A. YES, I BELIEVE THERE ARE A NUMBER OF ENDOCRINE

11:40AM 20 ABNORMALITIES WHERE A FEMALE PATIENT COULD HAVE A HIGH

11:40AM 21 TESTOSTERONE, YES.

11:40AM 22 Q. AND HOW ABOUT TT3? WHAT IS THE TT3 ASSAY?

11:40AM 23 A. TOTAL T3, OR TRIIODOTHYRONINE, IT'S A MEASURE OF THYROID

11:40AM 24 FUNCTION.

11:40AM 25 Q. AND FOR THAT ONE, THE QUALITY CONTROL FAILURE RATE AT

11:40AM 1 THERANOS WAS 51 PERCENT.

11:41AM 2 DO YOU SEE THAT?

11:41AM 3 A. YES.

11:41AM 4 Q. AS LABORATORY DIRECTOR, WERE QUALITY CONTROL FAILURE RATES
11:41AM 5 LIKE THESE CONCERNING TO YOU?

11:41AM 6 A. YES.

11:41AM 7 Q. WHY?

11:41AM 8 A. WELL, TAKE, FOR INSTANCE, TT3. IF QC IS FAILING HALF OF
11:41AM 9 THE TIME, OR 50 PERCENT OF THE TIME, IT INDICATES THAT THE
11:41AM 10 PATIENT RESULT WOULD BE INACCURATE HALF OF THE TIME.

11:41AM 11 Q. YOU TESTIFIED BEFORE THAT IF THE MACHINE FAILED QUALITY
11:41AM 12 CONTROL, THEN IT WOULD NOT BE USED IMMEDIATELY FOR PATIENT
11:41AM 13 TESTING; IS THAT RIGHT?

11:41AM 14 A. CORRECT.

11:41AM 15 Q. DOES FOLLOWING THAT RULE REMOVE YOUR CONCERN ABOUT
11:41AM 16 INACCURATE RESULTS GOING OUT TO PATIENTS WHEN QC RATES LOOK
11:41AM 17 LIKE THIS?

11:41AM 18 A. NO.

11:41AM 19 Q. WHY NOT?

11:41AM 20 A. BECAUSE EVEN A BROKEN CLOCK IS CORRECT TWICE A DAY.

11:41AM 21 Q. CAN YOU EXPLAIN WHAT YOU MEAN BY THAT?

11:42AM 22 A. WELL, YOU COULD JUST KEEP TESTING THE QC MATERIAL UNTIL IT
11:42AM 23 HAPPENS TO PASS, BUT THAT DOESN'T MEAN THAT YOUR ASSAY IS
11:42AM 24 RELIABLE BY ANY MEANS.

11:42AM 25 Q. UM --

11:42AM 1 A. YOU ONLY GET ONE SHOT WITH A PATIENT SAMPLE.

11:42AM 2 Q. AND WITH A PATIENT SAMPLE -- LET ME BACK UP.

11:42AM 3 WITH THESE QUALITY CONTROL SAMPLES, WHEN THE TEST WAS RUN,
11:42AM 4 WAS THERE A WAY OF KNOWING RIGHT AWAY WHETHER THE RESULT WAS
11:42AM 5 ACCURATE OR INACCURATE?

11:42AM 6 A. IF IT FELL OUT OF THE RANGE, THEN IT WOULD BE DEEMED
11:42AM 7 INACCURATE.

11:42AM 8 Q. HOW ABOUT FOR A PATIENT SAMPLE? WHEN YOU RUN A PATIENT
11:42AM 9 SAMPLE, IS THERE A WAY OF KNOWING RIGHT AWAY WHETHER THE RESULT
11:42AM 10 IS ACCURATE OR INACCURATE?

11:42AM 11 A. THERE'S NO WAY.

11:42AM 12 Q. OKAY. WE'RE LOOKING AT DATA FROM MARCH OF 2014 AND THE
11:42AM 13 QUALITY CONTROL FAILURES FOR THAT MONTH; CORRECT?

11:42AM 14 A. YES.

11:42AM 15 Q. DO YOU REMEMBER MARCH BEING AN ESPECIALLY BAD MONTH FOR
11:43AM 16 QUALITY CONTROL AT THERANOS, OR IS THIS PERFORMANCE TYPICAL OF
11:43AM 17 WHAT YOU SAW FROM THE THERANOS DEVICES AS LAB DIRECTOR?

11:43AM 18 A. TYPICAL.

11:43AM 19 Q. OKAY. WE CAN PUT THAT ASIDE.

11:43AM 20 DID THE POOR QUALITY CONTROL PERFORMANCE OF THE THERANOS
11:43AM 21 DEVICES CAUSE OPERATIONAL PROBLEMS IN THE LAB?

11:43AM 22 A. YES, ABSOLUTELY.

11:43AM 23 FOR INSTANCE, IF AN INSTRUMENT HAD TO BE TAKEN OUT OF
11:43AM 24 PRODUCTION FOR RECALIBRATION, THAT WOULD TAKE SEVERAL HOURS.
11:43AM 25 THAT INSTRUMENT WOULD NOT BE AVAILABLE FOR TESTING. IT RESULTS

11:43AM 1 IN SHORTAGES OF INSTRUMENTS.

11:43AM 2 Q. AND WERE QUALITY CONTROL FAILURES SO COMMON THAT THOSE

11:43AM 3 SHORTAGES ACTUALLY CAME ABOUT?

11:43AM 4 A. YES.

11:43AM 5 Q. CAN I ASK YOU TO LOOK AT TAB 1772 IN YOUR BINDER.

11:44AM 6 A. I HAVE IT.

11:44AM 7 Q. IS THAT AN EMAIL CHAIN BETWEEN YOU, MR. BALWANI, AND

11:44AM 8 OTHERS AT THE COMPANY RELATING TO THIS ISSUE OF QC PERFORMANCE

11:44AM 9 AND OPERATIONAL PROBLEMS?

11:44AM 10 A. YES.

11:44AM 11 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1772.

11:44AM 12 MR. COOPERSMITH: OBJECTION. 401, YOUR HONOR.

11:44AM 13 THE COURT: MR. BOSTIC, WHAT IS THE RELEVANCE OF

11:44AM 14 THIS?

11:44AM 15 MR. BOSTIC: SO, YOUR HONOR, THIS IS THE WITNESS

11:44AM 16 INFORMING MR. BALWANI OF POOR QUALITY CONTROL PERFORMANCE WITH

11:44AM 17 THE THERANOS ANALYZERS THAT ACTUALLY RISES TO A LEVEL THAT

11:44AM 18 CREATES A BACKLOG OF EDISON TESTS. THE FACT THAT THE DEFENDANT

11:44AM 19 WAS PUT ON NOTICE HERE IS RELEVANT.

11:45AM 20 THE COURT: THANK YOU.

11:45AM 21 THE OBJECTION IS OVERRULED. IT'S ADMITTED, AND IT MAY BE

11:45AM 22 PUBLISHED.

11:45AM 23 (GOVERNMENT'S EXHIBIT 1772 WAS RECEIVED IN EVIDENCE.)

11:45AM 24 BY MR. BOSTIC:

11:45AM 25 Q. AND LET'S START ON 1772 ON PAGE 3.

11:45AM 1 AND DO YOU SEE AN EMAIL THEREFROM ROMINA RIENER TO YOU ON
11:45AM 2 JANUARY 11TH, 2014?
11:45AM 3 A. YES.
11:45AM 4 Q. AND CAN YOU REMIND US HOW MANY MONTHS INTO THERANOS
11:45AM 5 OFFERING PATIENT TESTING IS THIS?
11:45AM 6 A. I THINK THAT'S TEN MONTHS IF MY MATH IS CORRECT.
11:45AM 7 Q. APPROXIMATELY?
11:45AM 8 A. YEAH.
11:45AM 9 Q. AND IN HER EMAIL SHE SAYS, "ADAM,
11:45AM 10 "HERE IS AN UPDATE ON WHERE WE ARE TODAY WITH SAMPLES AND
11:45AM 11 QC'S."
11:45AM 12 DO YOU SEE THAT?
11:45AM 13 A. YES.
11:45AM 14 Q. AND LET'S LOOK AT A COUPLE OF EXAMPLES, AND IF WE ZOOM IN
11:45AM 15 ON THAT FIRST TABLE, WE SEE THAT FOR TPSA -- DID YOU SAY THAT
11:45AM 16 WAS PROSTATE SPECIFIC ANTIGEN?
11:45AM 17 A. YES.
11:45AM 18 Q. AND FOR THAT ONE, OUT OF THREE READERS, ONLY ONE PASSED
11:46AM 19 BOTH QC.
11:46AM 20 DO YOU SEE THAT?
11:46AM 21 A. YES.
11:46AM 22 Q. AND UNDER NOTES, IT SAYS RERUNNING QC; CORRECT?
11:46AM 23 A. YES.
11:46AM 24 Q. DOWN AT THE BOTTOM FOR VITAMIN D, IT SAYS OUT OF FOUR
11:46AM 25 READERS, NOT ONE PASSED BOTH QUALITY CONTROLS.

11:46AM 1 DO YOU SEE THAT?

11:46AM 2 A. YES.

11:46AM 3 Q. AND UNDER THE NOTES THERE, AGAIN IT SAYS RERUNNING QC.

11:46AM 4 DO YOU SEE THAT?

11:46AM 5 A. YES.

11:46AM 6 Q. AND LET'S GO TO PAGE 2 AND ZOOM IN ON THE TOP TABLE. SO

11:46AM 7 MOVING FORWARD IN TIME.

11:46AM 8 AND WE GET AN UPDATE ON THESE NUMBERS; IS THAT RIGHT?

11:46AM 9 A. YES.

11:46AM 10 Q. SO AFTER THOSE RERUNS, FOR PSA, THE NUMBERS ARE STILL THE

11:46AM 11 SAME; CORRECT?

11:46AM 12 A. YES, ONE OUT OF THREE.

11:46AM 13 Q. AND OUT OF THREE RUNS, ONLY ONE PASSED.

11:46AM 14 AND THEN IT SAYS RERAN QC, FAILED AGAIN.

11:46AM 15 DO YOU SEE THAT?

11:46AM 16 A. YES.

11:46AM 17 Q. AND FOR VITAMIN D, TWO PASSED.

11:46AM 18 DO YOU SEE THAT?

11:46AM 19 A. YES.

11:46AM 20 Q. AND IT SAYS RERAN QC, ONLY TWO PASSED.

11:47AM 21 LET'S GO TO PAGE 1 AND ZOOM IN ON YOUR MESSAGE IN THE

11:47AM 22 MIDDLE OF THE PAGE.

11:47AM 23 THIS CAUSED YOU TO SEND AN EMAIL TO MR. BALWANI WITH THE

11:47AM 24 SUBJECT LINE EDISON BACKLOGS.

11:47AM 25 DO YOU SEE THAT?

11:47AM 1 A. YES.

11:47AM 2 Q. AND YOU MARKED IT HIGH IMPORTANCE?

11:47AM 3 A. YES.

11:47AM 4 Q. AND YOU SAY "HI SUNNY,

11:47AM 5 "IT LOOKS LIKE THERE IS QUITE A BACKLOG OF EDISON TESTS.

11:47AM 6 FOR INSTANCE, FOR TSH, THERE ARE 4 EDISONS THAT ARE AVAILABLE

11:47AM 7 AND PASSED QC, AND 23 PENDING TESTS TO BE RUN."

11:47AM 8 WHAT PROMPTED YOU TO SEND THIS INFORMATION TO MR. BALWANI?

11:47AM 9 A. I WAS ACTUALLY REALLY IRRITATED WITH MR. BALWANI BECAUSE I

11:47AM 10 HAD HEARD IN A LAB MEETING FROM BRIAN MARTIN THAT MR. BALWANI

11:47AM 11 HAD INSTRUCTED --

11:47AM 12 MR. COOPERSMITH: OBJECTION, YOUR HONOR. THIS IS

11:47AM 13 HEARSAY. MOVE TO STRIKE.

11:47AM 14 MR. BOSTIC: I THINK IF HE'S ABOUT TO RELAY

11:48AM 15 MR. BALWANI'S STATEMENTS, THAT'S NOT HEARSAY, YOUR HONOR.

11:48AM 16 MR. COOPERSMITH: HE WAS RELAYING A DIFFERENT

11:48AM 17 PERSON'S STATEMENT.

11:48AM 18 THE COURT: I'M SORRY?

11:48AM 19 MR. COOPERSMITH: YOUR HONOR, HE WAS RELAYING

11:48AM 20 SOMEONE ELSE'S STATEMENTS.

11:48AM 21 THE COURT: WELL, MR. BOSTIC, IF YOU CAN INQUIRE AS

11:48AM 22 TO THE SOURCE OF THE STATEMENT.

11:48AM 23 BY MR. BOSTIC:

11:48AM 24 Q. SO, DR. ROSENDORFF, I HAD ASKED YOU, I HAD ASKED YOU WHAT

11:48AM 25 CAUSED YOU TO SEND THIS EMAIL TO MR. BALWANI.

11:48AM 1 AND RATHER THAN ANSWER IN TERMS OF WHAT YOU HEARD, CAN YOU
11:48AM 2 JUST DESCRIBE FOR US WHY YOU THOUGHT THIS ISSUE DESERVED
11:48AM 3 MR. BALWANI'S ATTENTION?

11:48AM 4 MR. COOPERSMITH: SAME OBJECTION. IT'S ALREADY
11:48AM 5 BASED ON WHAT HE HEARD FROM A PERSON OTHER THAN MR. BALWANI.

11:48AM 6 THE COURT: OVERRULED.
11:48AM 7 YOU CAN ANSWER THE QUESTION.

11:48AM 8 THE WITNESS: MR. BALWANI HAD INSTRUCTED THE
11:48AM 9 LABORATORY STAFF TO ALIQUOT BLOOD FROM VACUTAINERS TO CTN'S AND
11:48AM 10 THEN RUN THEM ON THE EDISONS.

11:48AM 11 WE ALREADY WERE EXPERIENCING A BACKLOG ON THE EDISONS, AND
11:49AM 12 THIS PRACTICE MADE NO SENSE TO ME. IT MADE NO SENSE ON ANY
11:49AM 13 LEVEL WHATSOEVER, AND IT WAS AN EXAMPLE OF HOW MR. BALWANI
11:49AM 14 WOULD MAKE DECISIONS WITHOUT CONSULTING ME.

11:49AM 15 BY MR. BOSTIC:

11:49AM 16 Q. SO WE UNDERSTAND, WHAT ARE WE TALKING ABOUT WHEN WE'RE
11:49AM 17 TALKING ABOUT ALIQUOTING SAMPLES FROM A VACUTAINER TO A CTN?
11:49AM 18 WHAT DOES THAT MEAN?

11:49AM 19 A. SO THE VENOUS BLOOD GOES INTO THE VACUTAINER, IT'S A
11:49AM 20 PLASTIC TUBE, A COUPLE MILS OF BLOOD.

11:49AM 21 AND THE PRACTICE HERE WAS TO TAKE A PIPET AND TRANSFER
11:49AM 22 THAT BLOOD FROM THE VACUTAINER INTO A CTN, WHICH IS THE DEVICE
11:49AM 23 THAT WAS USED TO COLLECT THE FINGERSTICK SAMPLES.

11:49AM 24 Q. AND BECAUSE IT WAS A VENOUS SAMPLE AND A VACUTAINER, COULD
11:49AM 25 THAT SAMPLE HAVE BEEN RUN ON A STANDARD FDA APPROVED DEVICE?

11:50AM 1 A. ABSOLUTELY, AND SHOULD HAVE.

11:50AM 2 Q. AND WHY DID YOU OBJECT TO THE PRACTICE OF TAKING A VENOUS
11:50AM 3 SAMPLE FROM A VACUTAINER AND RUNNING IT ON A THERANOS ANALYZER?

11:50AM 4 A. THAT WOULD INVOLVE SOMEBODY GOING INTO A TUBE AND
11:50AM 5 MANIPULATING THE TUBE, AND SO THERE'S THE POSSIBILITY OF
11:50AM 6 CONTAMINATION THERE, OR MIXUPS IN THE ALIQUOT PROCESS.

11:50AM 7 IT WOULD SEEM TO BE AN EFFORT TO REPRESENT THAT THAT
11:50AM 8 FINGERSTICK BLOOD HAD BEEN COLLECTED RATHER THAN VENOUS BLOOD.

11:50AM 9 AND IT WAS ALSO CAUSING OPERATIONAL PROBLEMS AND BACKLOGS.

11:50AM 10 Q. AND WERE THOSE BACKLOGS CAUSED BY NOT HAVING ENOUGH
11:50AM 11 EDISONS AVAILABLE TO RUN THE TESTS THAT WERE ON DECK?

11:51AM 12 A. CORRECT.

11:51AM 13 Q. AND DID THE QC FAILURES HAVE ANY EFFECT ON THAT BACKLOG?

11:51AM 14 A. YES.

11:51AM 15 Q. HOW SO?

11:51AM 16 A. AS I MENTIONED, A QC FAILURE WOULD NECESSITATE RERUNNING
11:51AM 17 THE QC, AND THEN IF FAILS AGAIN, YOU WOULD HAVE TO RECALIBRATE.
11:51AM 18 SO IT WOULD REALLY ADD HOURS ON TO THE TURN-AROUND TIME OF THE
11:51AM 19 LABORATORY TESTS. DAYS MAYBE.

11:51AM 20 Q. LET'S -- THANK YOU. LET'S LOOK AT THE TOP OF THIS PAGE,
11:51AM 21 PAGE 1, AND SEE MR. BALWANI'S RESPONSE.

11:51AM 22 FIRST, HE INCLUDES OTHERS ON THIS EMAIL, INCLUDING
11:51AM 23 MS. HOLMES AND DANIEL YOUNG.

11:51AM 24 DO YOU SEE THAT?

11:51AM 25 A. YES.

11:51AM 1 Q. HE SAYS, "WE NEED THIS MESS RESOLVED ASAP."

11:51AM 2 DO YOU SEE THAT?

11:51AM 3 A. YES.

11:51AM 4 Q. AND HE NOTES THAT HE HAS BEEN ASKING FOR MORE READERS FOR

11:51AM 5 OVER TWO WEEKS NOW, AND HE NOTES THE TOTAL NUMBER OF WORKING

11:52AM 6 READY CALIBRATED EDISONS.

11:52AM 7 DO YOU SEE THAT?

11:52AM 8 A. YES.

11:52AM 9 Q. AND MR. BALWANI'S SOLUTION TO THE PROBLEM WAS MORE

11:52AM 10 EDISONS; IS THAT RIGHT?

11:52AM 11 A. YES, HE SAYS MORE READERS, CORRECT.

11:52AM 12 Q. OKAY. WE CAN PUT THAT ASIDE.

11:52AM 13 AND IF I CAN ASK YOU TO TURN TO TAB 2188.

11:52AM 14 A. I HAVE IT.

11:52AM 15 Q. AND IS 2188 AN EMAIL BETWEEN YOU AND MR. BALWANI RELATING

11:52AM 16 TO QUALITY CONTROL FAILURES WITH THERANOS TESTS?

11:52AM 17 A. YES.

11:52AM 18 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2188.

11:52AM 19 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:52AM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:53AM 21 (GOVERNMENT'S EXHIBIT 2188 WAS RECEIVED IN EVIDENCE.)

11:53AM 22 BY MR. BOSTIC:

11:53AM 23 Q. OKAY. LET'S START WITH THE ORIGINAL MESSAGE ON PAGE 2 AT

11:53AM 24 THE BOTTOM.

11:53AM 25 SO FIRST, DR. ROSENDORFF, LET'S SEE HOW THIS CONVERSATION

11:53AM 1 BEGAN. WE'RE LOOKING AT AN EMAIL FROM YOU TO MS. HOLMES AND
11:53AM 2 MR. BALWANI; IS THAT RIGHT?

11:53AM 3 A. YES.

11:53AM 4 Q. AND THIS IS NOVEMBER 3RD, 2014; IS THAT CORRECT?

11:53AM 5 A. YES.

11:53AM 6 Q. CAN YOU REMIND US WHAT MONTH YOU LEFT THE COMPANY?

11:53AM 7 A. NOVEMBER 2014.

11:53AM 8 Q. WAS THIS MORE THAN A YEAR AFTER THERANOS BEGAN PATIENT
11:53AM 9 TESTING?

11:53AM 10 A. CORRECT.

11:53AM 11 Q. IN YOUR EMAIL YOU SAY, "I WOULD PREFER IF ALL THERANOS
11:53AM 12 TESTS SHOWED REFERENCE RANGES THAT WERE SPECIFIC TO THE SAMPLE
11:53AM 13 TYPE AND METHOD BEING USED."

11:53AM 14 CAN YOU EXPLAIN WHAT YOU WERE ASKING FOR HERE AND WHY?

11:53AM 15 A. REALLY THERE WAS A LACK OF LITERATURE ABOUT WHAT REFERENCE
11:53AM 16 RANGES WERE IN FINGERSTICK BLOOD VERSUS VERY WELL ESTABLISHED
11:53AM 17 REFERENCE RANGES FOR VENOUS BLOOD.

11:54AM 18 I DIDN'T THINK THAT VENOUS BLOOD AND CAPILLARY BLOOD AND
11:54AM 19 FINGERSTICK BLOOD WERE EQUIVALENT NECESSARILY, SO IT WAS BETTER
11:54AM 20 PRACTICE, MORE CAUTIOUS PRACTICE TO HAVE SEPARATE REFERENCE
11:54AM 21 RANGES FOR CAPILLARY VERSUS VENOUS BLOOD.

11:54AM 22 Q. YOU LAY OUT THREE KINDS OF TESTING SCENARIOS IN YOUR
11:54AM 23 EMAIL.

11:54AM 24 DO YOU SEE THAT?

11:54AM 25 A. YES.

11:54AM 1 Q. AND THE FIRST ONE IS TESTING CAPILLARY BLOOD USING A
11:54AM 2 THERANOS TEST; IS THAT RIGHT?

11:54AM 3 A. YES.

11:54AM 4 Q. AND THE THIRD ONE IS TESTING VENOUS BLOOD ON A PREDICATE
11:54AM 5 TEST; IS THAT RIGHT?

11:54AM 6 A. YES.

11:54AM 7 Q. AND THAT WOULD MEAN A NON-THERANOS FDA APPROVED DEVICE?

11:54AM 8 A. CORRECT.

11:54AM 9 Q. AND SCENARIO 2 INVOLVES USING VENOUS BLOOD ON A THERANOS
11:54AM 10 TEST; IS THAT CORRECT?

11:54AM 11 A. YES.

11:54AM 12 Q. AND YOU SAY IN YOUR EMAIL IN TERMS OF NUMBER 2, "WE SHOULD
11:54AM 13 DISCONTINUE THIS PRACTICE."

11:54AM 14 DO YOU SEE THAT?

11:54AM 15 A. YES.

11:54AM 16 Q. AND WHY DID YOU RECOMMEND DISCONTINUING THAT PRACTICE?

11:54AM 17 A. IT RELATES BACK TO THE PREVIOUS EMAIL THAT WE DISCUSSED
11:55AM 18 WHERE CONTAMINATION BACKLOGS AND LACK OF TRANSPARENCY ABOUT
11:55AM 19 WHAT SAMPLE'S ACTUALLY BEING RUN.

11:55AM 20 Q. AND AT ANY POINT DURING YOUR EMPLOYMENT AT THE COMPANY,
11:55AM 21 DID MR. BALWANI AGREE TO DISCONTINUE THE TESTING OF VENOUS
11:55AM 22 BLOOD ON THE THERANOS ANALYZER?

11:55AM 23 A. I DON'T BELIEVE HE CONCEDED THE POINT IN THIS EXCHANGE.
11:55AM 24 I DON'T RECALL FURTHER CONVERSATIONS ON IT.

11:55AM 25 Q. OKAY. LET'S GO TO PAGE 1 AND LOOK AT THE TOP HALF.

11:55AM 1 AND YOU'RE HAVING A ONE-ON-ONE EMAIL EXCHANGE WITH

11:55AM 2 MR. BALWANI; CORRECT?

11:55AM 3 A. YES.

11:55AM 4 Q. AND AT THE BOTTOM OF THIS EMAIL SELECTION IT SAYS,

11:55AM 5 "FINALLY (AND THERE IS OBJECTIVE DATA ON THIS), THE RATE OF QC

11:56AM 6 FAILURE IS LOWER ON PREDICATE DEVICES THAN IT IS ON EDISONS, AS

11:56AM 7 IS THE THROUGHPUT OF PREDICATE DEVICES."

11:56AM 8 FIRST OF ALL, WHEN YOU SAY, "THE RATE OF QC FAILURE IS

11:56AM 9 LOWER ON PREDICATE DEVICES THAN IT IS ON EDISONS," WHAT DID YOU

11:56AM 10 MEAN BY THAT?

11:56AM 11 A. IT MEANS THAT THE FDA APPROVED INSTRUMENTS FAILED QC MUCH

11:56AM 12 MORE RARELY THAN DID THE EDISONS.

11:56AM 13 Q. AND YOU SAY THAT "THERE IS OBJECTIVE DATA ON THIS."

11:56AM 14 HOW DID YOU KNOW THAT TO BE ABLE TO TELL MR. BALWANI?

11:56AM 15 A. WE HAD OBJECTIVE DATA ON OUR QC PERFORMANCE FOR EACH

11:56AM 16 MONTH.

11:56AM 17 Q. SO THIS WAS ALL, OR AT LEAST PARTLY, BASED ON DATA

11:56AM 18 GENERATED WITHIN THERANOS ITSELF?

11:56AM 19 A. YES.

11:56AM 20 Q. BY THE WAY, YOU SAY IN THAT SAME EMAIL, "AS IS THE

11:56AM 21 THROUGHPUT OF PREDICATE DEVICES." HOW DID THE THROUGHPUT OF

11:56AM 22 PREDICATE DEVICES COMPARE TO THE THROUGHPUT OF THE EDISON

11:57AM 23 DEVICES?

11:57AM 24 A. MUCH HIGHER THROUGHPUT ON PREDICATE DEVICES.

11:57AM 25 Q. DOES THAT MEAN THAT THEY COULD HANDLE MORE TESTS IN LESS

11:57AM 1 TIME?

11:57AM 2 A. YES.

11:57AM 3 Q. MR. BALWANI RESPONDS TO YOUR EMAIL. HE SAYS, "ADAM,"

11:57AM 4 PERIOD, "THIS IS NOT THE CASE."

11:57AM 5 DO YOU SEE THAT?

11:57AM 6 A. YES.

11:57AM 7 Q. DID MR. BALWANI EVER PROVIDE YOU WITH ANY EVIDENCE

11:57AM 8 SUPPORTING HIS DISAGREEMENT WITH WHAT YOU SAID ABOUT THE

11:57AM 9 EDISONS DOING WORSE ON QC?

11:57AM 10 A. NO. IT'S JUST A FLAT REBUTTAL.

11:57AM 11 Q. HE SAYS ALSO, "WHEN A DEVICE FAILS, WE ALWAYS TAKE THE

11:57AM 12 RIGHT CORRECTIVE ACTION AND MAKE SURE IT DOESN'T IMPACT THE

11:57AM 13 QUALITY OF RESULTS."

11:57AM 14 DO YOU SEE THAT?

11:57AM 15 A. YES.

11:57AM 16 Q. DOES THAT POINT RESOLVE, OR DID THAT POINT RESOLVE YOUR

11:57AM 17 CONCERNS ABOUT THE RELIABILITY OF THERANOS'S TESTS IN LIGHT OF

11:58AM 18 THE QC PERFORMANCE?

11:58AM 19 A. NO.

11:58AM 20 Q. WHY NOT?

11:58AM 21 A. AS I MENTIONED, THE CORRECTIVE ACTION FOR QC FAILURES IS

11:58AM 22 TO RERUN THE QC. IF IT HAPPENS TO PASS AGAIN -- I'M SORRY.

11:58AM 23 THE COURT: IS THERE AN ISSUE WITH THE MACHINE?

11:58AM 24 THE SCREEN IS OUT. I SEE.

11:58AM 25 GIVE ME JUST A SECOND, MR. BOSTIC.

11:58AM 1 IT LOOKS LIKE ONE OF OUR SCREENS IN THE JURY BOX IS OUT.

11:58AM 2 CAN YOU JUST MAYBE SEE IF THE WIRES ARE ATTACHED.

11:58AM 3 THE CLERK: I CAN, BUT I HAVE TO GET BACK IN THERE.

11:58AM 4 MR. BOSTIC: YOUR HONOR, THIS WAS MY LAST QUESTION

11:58AM 5 BEFORE CHANGING TOPICS, SO IF THE COURT NEEDED TO TAKE A BREAK?

11:58AM 6 THE COURT: WELL, WE CAN DO THAT NOW.

11:58AM 7 WHY DON'T YOU -- CAN THE JURORS SEE THE OTHER MONITORS?

11:58AM 8 I'M SEEING THUMBS UP. YES. OKAY. SO LET'S PROCEED FOR JUST A
11:58AM 9 MOMENT.

11:58AM 10 THANK YOU, MR. BOSTIC.

11:58AM 11 BY MR. BOSTIC:

11:58AM 12 Q. SO, DR. ROSENDORFF, I THINK THE QUESTION PENDING WAS

11:59AM 13 MR. BALWANI'S POINT ABOUT TAKING CORRECTIVE ACTION WHEN A

11:59AM 14 DEVICE FAILED QC, DID THAT ADDRESS YOUR CONCERNS ABOUT THE

11:59AM 15 QUALITY OF THERANOS'S TEST RESULTS?

11:59AM 16 A. NO.

11:59AM 17 Q. AND WHY NOT?

11:59AM 18 A. FOR INSTANCE, WHEN QC FAILS HALF OF THE TIME, IF IT FAILS

11:59AM 19 ONCE, YOU RERUN THE QC. IT'S NOW GOT A 50 PERCENT CHANCE OF

11:59AM 20 WORKING.

11:59AM 21 IF IT HAPPENS TO WORK, YOU GO AHEAD AND RUN YOUR SAMPLES,

11:59AM 22 YOUR PATIENT SAMPLES.

11:59AM 23 WHAT THAT MEANS, IN ESSENCE, IS THAT THERE'S A 50 PERCENT

11:59AM 24 CHANCE OF THE PATIENT RESULTS BEING ACCURATE.

11:59AM 25 Q. OKAY. THANK YOU.

11:59AM 1 WE CAN SET THAT EXHIBIT ASIDE.

11:59AM 2 I'M ABOUT TO SHIFT GEARS, YOUR HONOR.

11:59AM 3 THE COURT: DO YOU HAVE OTHER EXHIBITS?

11:59AM 4 MR. BOSTIC: YES.

11:59AM 5 THE COURT: OKAY. LET'S TAKE OUR BREAK NOW, LADIES

11:59AM 6 AND GENTLEMEN. LET'S TAKE OUR BREAK. WE'LL TAKE 30 MINUTES,

11:59AM 7 AND THEN WE'LL RESUME.

12:00PM 8 YOU CAN STAND DOWN, DOCTOR. THANK YOU.

12:00PM 9 (JURY OUT AT 12:00 P.M.)

12:00PM 10 THE COURT: THE RECORD SHOULD REFLECT THAT THE JURY

12:00PM 11 HAS LEFT FOR THEIR BREAK.

12:00PM 12 WE'LL TRY TO CORRECT THIS MONITOR SITUATION.

12:00PM 13 ANYTHING BEFORE WE BREAK, COUNSEL?

12:01PM 14 MR. BOSTIC: NO, YOUR HONOR.

12:01PM 15 MR. COOPERSMITH: NO, YOUR HONOR.

12:01PM 16 (RECESS FROM 12:01 P.M. UNTIL 12:40 P.M.)

12:41PM 17 (JURY IN AT 12:41 P.M.)

12:41PM 18 THE COURT: PLEASE BE SEATED. THANK YOU.

12:41PM 19 ALL RIGHT. THANK YOU.

12:41PM 20 WE'RE BACK ON THE RECORD. ALL PARTIES PREVIOUSLY PRESENT

12:41PM 21 ARE PRESENT ONCE AGAIN.

12:41PM 22 OUR JURY IS PRESENT.

12:41PM 23 MR. BOSTIC, YOU'D LIKE TO CONTINUE?

12:41PM 24 MR. BOSTIC: YES, YOUR HONOR. THANK YOU.

12:41PM 25 Q. DR. ROSENDORFF, WELCOME BACK.

12:41PM 1 A. THANK YOU.

12:41PM 2 Q. I WANT TO FOLLOW UP ON ONE TOPIC THAT WE DISCUSSED BEFORE
12:41PM 3 THE BREAK, WHICH IS THE TIME PERIOD AROUND THE COMMERCIAL
12:41PM 4 LAUNCH OF THE TESTING SERVICES.

12:41PM 5 DO YOU REMEMBER THAT TIME PERIOD?

12:41PM 6 A. YES.

12:41PM 7 Q. AND AROUND THAT TIME PERIOD, WE LOOKED AT AN EMAIL THAT
12:41PM 8 YOU SENT TO MS. HOLMES REQUESTING THAT THE LAUNCH BE DELAYED.

12:41PM 9 DO YOU REMEMBER THAT?

12:41PM 10 A. YES.

12:41PM 11 Q. BESIDES THAT EMAIL, DID YOU HAVE ANY CONVERSATIONS WITH
12:42PM 12 EITHER MS. HOLMES OR MR. BALWANI ABOUT THAT TOPIC, WHETHER THE
12:42PM 13 LAUNCH COULD BE DELAYED OR NOT?

12:42PM 14 A. YES, I HAD A CONVERSATION WITH MS. HOLMES ABOUT IT.

12:42PM 15 Q. AND WHEN DID THAT TAKE PLACE? WAS IT BEFORE THE LAUNCH
12:42PM 16 DATE?

12:42PM 17 A. IT WAS A COUPLE OF DAYS BEFORE THE LAUNCH, YES.

12:42PM 18 Q. AND WHAT DO YOU REMEMBER ABOUT THAT CONVERSATION?

12:42PM 19 MR. COOPERSMITH: OBJECTION, YOUR HONOR. HEARSAY.

12:42PM 20 THE COURT: OVERRULED.

12:42PM 21 YOU CAN ANSWER THE QUESTION, SIR.

12:42PM 22 THE WITNESS: I WAS FEELING VERY UNCOMFORTABLE ABOUT
12:42PM 23 THE READINESS OF THE LAB FOR THE LAUNCH. I -- ELIZABETH HAD
12:42PM 24 PAPERS STUCK TO HER WINDOW, THERE WAS A COUNTDOWN CLOCK FOR THE
12:42PM 25 LAUNCH.

12:42PM 1 I WENT INTO HER OFFICE. I TOLD HER THAT I HAD SERIOUS,
12:42PM 2 GRAVE CONCERNS ABOUT SODIUM, POTASSIUM, GLUCOSE VALUES.
12:42PM 3 SHE WAS VERY NERVOUS. SHE WASN'T HER UNUSUAL SELF, THIS
12:43PM 4 CONFIDENT, ASSURED CEO.
12:43PM 5 SHE SEEMED SCARED, FRANKLY. HER KNEE WAS TAPPING.
12:43PM 6 AND SHE SAID THAT THE WORST CASE SCENARIO, THE LABORATORY
12:43PM 7 COULD REVERT TO VENOUS DRAWS FOR THESE TESTS THAT I WAS WORRIED
12:43PM 8 ABOUT.
12:43PM 9 BY MR. BOSTIC:
12:43PM 10 Q. DURING THAT CONVERSATION, WAS MS. HOLMES RECEPTIVE TO THE
12:43PM 11 IDEA OF PUSHING BACK THE LAUNCH DATE?
12:43PM 12 A. NO, SHE WAS NOT.
12:43PM 13 Q. DO YOU RECALL HER SAYING ANYTHING SPECIFIC ABOUT THAT?
12:43PM 14 A. NO. IT WAS NEVER -- SHE NEVER OFFERED THAT AS A SOLUTION.
12:43PM 15 Q. YOU SAID THAT MS. HOLMES SAID THAT, WORST CASE SCENARIO,
12:43PM 16 THE COMPANY COULD USE NON-THERANOS TECHNOLOGY; IS THAT RIGHT?
12:43PM 17 A. CORRECT.
12:43PM 18 Q. GOING FORWARD, DID YOU HAVE FURTHER DISCUSSIONS WITH
12:44PM 19 MR. BALWANI AND MS. HOLMES ABOUT WHETHER THERANOS SHOULD USE
12:44PM 20 NON-THERANOS TECHNOLOGY FOR SOME TESTS?
12:44PM 21 A. THERE WAS AN EMAIL EXCHANGE SPECIFICALLY REGARDING HCG
12:44PM 22 TESTING THAT I BELIEVE MR. BALWANI WAS ON WHERE I ORDERED THE
12:44PM 23 LAB TO DISCONTINUE THE EDISON TESTING FOR HCG.
12:44PM 24 I SUGGESTED AT ONE POINT TO RUN POTASSIUM NEAT. I
12:44PM 25 SUGGESTED IT TO DANIEL. I THINK SUNNY WAS ON THAT EMAIL CHAIN,

12:44PM 1 TOO.

12:44PM 2 Q. AND I THINK WE'LL LOOK AT ONE OR TWO OF THOSE.

12:44PM 3 A. YEAH.

12:44PM 4 Q. AND I GUESS WHAT I'M ASKING NOW IS, GENERALLY SPEAKING,
12:44PM 5 WERE MR. HOLMES -- MR. BALWANI AND MS. HOLMES RECEPTIVE TO THAT
12:44PM 6 IDEA OF DISCONTINUING USE OF THE THERANOS TECHNOLOGY AND USING
12:44PM 7 THIRD PARTY DEVICES INSTEAD?

12:44PM 8 A. NOT AT ALL. IT WAS TABOO TO SUGGEST THAT, YEAH.

12:45PM 9 Q. AND WHAT GAVE YOU THAT IMPRESSION? WAS IT THE SPECIFIC
12:45PM 10 INSTANCES THAT YOU'RE REFERENCING?

12:45PM 11 A. YES.

12:45PM 12 Q. I'D LIKE TO TALK TO YOU NEXT ABOUT PROFICIENCY TESTING AT
12:45PM 13 THERANOS.

12:45PM 14 A. YES.

12:45PM 15 Q. FIRST, CAN YOU TELL US WHAT PROFICIENCY TESTING IS AT A
12:45PM 16 LAB AND HOW IT FITS IN WITH QUALITY CONTROL?

12:45PM 17 A. IN ORDER FOR A LAB TO OPERATE, IT NEEDS TO CONDUCT
12:45PM 18 PROFICIENCY TESTING AT LEAST TWICE A YEAR FOR ALL, FOR ALL OF
12:45PM 19 THE CMS LISTED ANALYTES THAT REQUIRE PROFICIENCY TESTING.

12:45PM 20 GOOD LABORATORY PRACTICE, YOU WOULD DO PROFICIENCY TESTING
12:45PM 21 FOR ALL OF THE ANALYTES.

12:45PM 22 YOU SIGN UP WITH AN ORGANIZATION LIKE COLLEGE OF AMERICAN
12:45PM 23 PATHOLOGISTS, CAP, OR NEW YORK STATE, OR AMERICAN PROFICIENCY
12:45PM 24 INSTITUTE. TWICE A YEAR THEY SEND YOU VIALS WITH MATERIAL IN
12:46PM 25 IT THAT MIMICS A HUMAN SAMPLE.

12:46PM 1 YOU THEN RUN THESE SAMPLES. YOU GET A NUMBER, YOU GET A
12:46PM 2 RESULT, YOU WRITE IT DOWN ONLINE OR ON A PIECE OF PAPER, SEND
12:46PM 3 IT BACK TO THESE COMPANIES, OR ORGANIZATIONS, AND THEN A FEW
12:46PM 4 WEEKS LATER THEY'LL LET YOU KNOW HOW YOU DID.

12:46PM 5 AND ONE KEY ASPECT TO PROFICIENCY TESTING IS THAT YOU'RE
12:46PM 6 COMPARED TO YOUR PEERS, SO THE RESULT THAT YOU GET IS COMPARED
12:46PM 7 TO ALL OF THE OTHER USERS OF THE SAME METHOD.

12:46PM 8 Q. AND WHEN WE'RE TALKING ABOUT THE SAME METHOD, DO YOU MEAN
12:46PM 9 THE SAME CHEMISTRY RUN ON THE SAME DEVICE?

12:46PM 10 A. YES.

12:46PM 11 Q. HOW DOES PROFICIENCY TESTING WORK THEN IN THE CONTEXT OF
12:46PM 12 DEVICES THAT ARE ONLY USED IN ONE PLACE, LIKE THE THERANOS
12:46PM 13 EDISONS?

12:46PM 14 A. FOR LDT'S THE STANDARD PRACTICE IS YOU DO ALTERNATIVE
12:46PM 15 PROFICIENCY.

12:46PM 16 Q. AND WHAT IS THAT? HOW IS THAT DIFFERENT FROM NORMAL PT?

12:47PM 17 A. THERE ARE DIFFERENT APPROACHES TO THIS. ONE IS TO
12:47PM 18 BASICALLY CONTRIVE SPECIMENS WITH DIFFERENT LEVELS OF ANALYTES
12:47PM 19 IN THEM AND HAND THEM OFF TO THE LAB AND HAVE THEM TESTED.

12:47PM 20 YOU TRY NOT TO HAVE THESE TWO GROUPS COMMUNICATE TO EACH
12:47PM 21 OTHER TO BLIND THE PROCESS SOMEWHAT.

12:47PM 22 ANOTHER APPROACH IS YOU SPLIT THE SAMPLES AND YOU TEST
12:47PM 23 SOME AT YOUR OWN LAB AND YOU SEND THE OTHERS OUT TO BE TESTED
12:47PM 24 AT A DIFFERENT LAB AND YOU COMPARE THE RESULTS.

12:47PM 25 OR IN THERANOS'S CASE, YOU COULD COMPARE THE RESULTS THAT

12:47PM 1 YOU WOULD GET BY FINGERSTICK TO THE RESULTS YOU WOULD GET
12:47PM 2 USING, YOU KNOW, ON THE PREDICATE DEVICES. SO YOU WOULD
12:47PM 3 COMPARE THE LDT TO THE PREDICATE DEVICE.

12:47PM 4 Q. AND WHAT IS THE POINT OF DOING THIS KIND OF PROFICIENCY
12:47PM 5 TESTING?

12:47PM 6 WE'VE TALKED ALREADY TODAY ABOUT VALIDATION OF ASSAYS, AND
12:47PM 7 ON GOING QUALITY CONTROL.

12:47PM 8 WHY, AS A LAB DIRECTOR, DO YOU WANT TO SEE PROFICIENCY
12:48PM 9 TESTING AS WELL?

12:48PM 10 A. WELL, ONE ASPECT -- MAYBE I HAVEN'T SPOKEN ABOUT IT
12:48PM 11 BEFORE -- IS THAT YOU CAN HAVE QC DRIFT WHERE YOUR QC RANGES
12:48PM 12 CAN DRIFT OVER TIME. SO YOU MIGHT STILL BE IN WITH YOUR QC,
12:48PM 13 BUT YOU ACTUALLY, YOU'RE STARTING TO GET INTO A ZONE WHERE
12:48PM 14 YOU'RE REPORTING INACCURATE TESTS.

12:48PM 15 IT'S A FURTHER CHECK OF ACCURACY, I WOULD SAY.

12:48PM 16 IT ALSO ALLOWS YOU TO MAKE SURE THAT YOUR METHOD IS
12:48PM 17 COMPARABLE TO -- WHAT YOU'RE GETTING IS THE SAME AS WHAT OTHERS
12:48PM 18 ARE GETTING IN THE COMMUNITY FOR TEST VALUE.

12:48PM 19 Q. SO LET'S TALK ABOUT PROFICIENCY TESTING AT THERANOS
12:48PM 20 SPECIFICALLY.

12:48PM 21 WHAT DO YOU RECALL ABOUT HOW PT WORKED AT THE COMPANY?

12:48PM 22 A. WHEN I ARRIVED AT THE COMPANY, PT WAS BEING RUN ON THE
12:48PM 23 PREDICATE DEVICES USING API, AMERICAN PROFICIENCY INSTITUTE, OR
12:49PM 24 NEW YORK STATE SAMPLES.

12:49PM 25 OVER TIME, THE LABORATORY WAS DOING MOSTLY FINGERSTICK AND

12:49PM 1 MOSTLY LDT'S, AND BECAUSE THE REGULATIONS SAY YOU HAVE TO DO
12:49PM 2 PROFICIENCY WITH YOUR PRIMARY METHOD, IN MY MIND, THESE LDT'S
12:49PM 3 HAD BECOME THE PRIMARY METHOD.

12:49PM 4 SO, FOR INSTANCE, ON THE BLOOD ANALYZER WE WOULD DO
12:49PM 5 PROFICIENCY TESTING ON THE FDA APPROVED BLOOD ANALYZER, BUT WE
12:49PM 6 WEREN'T USING THAT AT ALL AFTER A WHILE FOR CBC'S, WE WERE
12:49PM 7 USING FLOW CYTOMETRY FOR CBC'S.

12:49PM 8 Q. AND IS CBC COMPLETE BLOOD COUNT?

12:49PM 9 A. YES.

12:49PM 10 Q. AND WHY IS THAT A PROBLEM, IF IT IS, THE MISMATCH BETWEEN
12:49PM 11 WHAT DEVICES ARE USED FOR PROFICIENCY VERSUS DIFFERENT DEVICES
12:50PM 12 USED FOR PATIENT TESTING?

12:50PM 13 A. WELL, FIRST OF ALL, JUST UPPER -- YOU KNOW IN TERMS OF
12:50PM 14 GOOD LABORATORY PRACTICE, IT DOESN'T TELL YOU HOW YOUR LDT IS
12:50PM 15 WORKING, WHETHER IT'S WORKING WELL OR BADLY, AND LEGALLY IT'S A
12:50PM 16 FORM OF CHEATING.

12:50PM 17 Q. AT THERANOS, DID YOU RAISE -- WELL, LET ME JUST ASK --

12:50PM 18 MR. COOPERSMITH: I MOVE TO STRIKE THE LAST ANSWER.
12:50PM 19 IT CALLS FOR AN IMPROPER LEGAL CONCLUSION.

12:50PM 20 THE COURT: THE WORD "CHEATING"?

12:50PM 21 MR. COOPERSMITH: YES, YOUR HONOR.

12:50PM 22 THE COURT: OVERRULED.

12:50PM 23 BY MR. BOSTIC:

12:50PM 24 Q. DR. ROSENDORFF, DURING YOUR TIME AT THE COMPANY, DID YOU
12:50PM 25 HAVE CONCERNS ABOUT THE WAY THE COMPANY WAS DOING OR NOT DOING

12:50PM 1 PROFICIENCY TESTING?

12:50PM 2 A. YES.

12:50PM 3 Q. DID YOU RAISE THOSE CONCERNS TO MANAGEMENT ABOVE YOU?

12:50PM 4 A. REPEATEDLY, YES.

12:50PM 5 Q. DID THAT INCLUDE CONVERSATIONS WITH MR. BALWANI?

12:50PM 6 A. YES.

12:50PM 7 Q. WHAT DO YOU REMEMBER ABOUT THOSE CONVERSATIONS AND

12:51PM 8 MR. BALWANI'S ATTITUDE ABOUT YOUR CONCERNS?

12:51PM 9 A. I REMEMBER AN INCIDENT WHERE WE DECIDED TO RUN LEFTOVER PT

12:51PM 10 SAMPLE ON THE EDISONS WHERE MR. BALWANI -- WHERE THE RESULTS OF

12:51PM 11 THOSE SHOWED THAT WE WERE FAILING -- WE WEREN'T ACCURATELY

12:51PM 12 REPORTING THOSE VALUES, AND I WROTE A LONG EMAIL CHAIN WHERE HE

12:51PM 13 BASICALLY SAID THERE'S A PROBLEM WITH THE PT SPECIMENS, THAT

12:51PM 14 THERE ISN'T A PROBLEM WITH THE MACHINES, IT'S THESE SPECIMENS

12:51PM 15 THAT ARE OFF.

12:51PM 16 Q. DID YOU HAVE CONVERSATIONS WITH MR. BALWANI ABOUT THE NEED

12:51PM 17 FOR THE ALTERNATIVE ASSESSMENT OF PROFICIENCY THAT YOU WERE

12:51PM 18 MENTIONING A MOMENT AGO?

12:51PM 19 A. YES.

12:51PM 20 Q. AND HOW DID HE REACT TO THOSE CONVERSATIONS? WAS THE

12:52PM 21 SITUATION RESOLVED AT THERANOS?

12:52PM 22 A. SO I MET WITH DANIEL IN 2013 AND WE DISCUSSED ALTERNATIVE

12:52PM 23 PROFICIENCY. THERE WAS AN SOP THAT WAS PUT TOGETHER THAT I

12:52PM 24 SIGNED.

12:52PM 25 THERE WAS NO DOCUMENT CONTROL AT THERANOS, SO IF I SIGNED

12:52PM 1 SOMETHING, THE CONTENT COULD HAVE BEEN CHANGED COMPLETELY AND
12:52PM 2 MY SIGNATURE WOULD STILL BE APPENDED TO THAT DOCUMENT.

12:52PM 3 THE -- I WAS KIND OF LOSING TRACK OF YOUR QUESTION. CAN
12:52PM 4 YOU REPEAT YOUR QUESTION?

12:52PM 5 Q. SURE. I CAN TRY TO ASK A MORE DIRECT QUESTION.

12:52PM 6 YOU SAID YOU DISCUSSED WITH MR. BALWANI THE NEED FOR
12:52PM 7 ALTERNATIVE PROFICIENCY; CORRECT?

12:52PM 8 A. YES.

12:52PM 9 Q. AND DID THERANOS EVER IMPLEMENT ALTERNATIVE PROFICIENCY
12:52PM 10 TESTING IN A WAY THAT SATISFIED YOUR CONCERNS?

12:52PM 11 A. NO. I RECALL SPECIFICALLY MR. BALWANI SAYING THAT WE WERE
12:53PM 12 DOING TOO MANY QUALITY EXERCISES AND SO, FOR INSTANCE, R&D
12:53PM 13 WOULD DO QUALITY EXERCISES TO CHECK ACCURACY INDEPENDENTLY OF
12:53PM 14 ANY SOP.

12:53PM 15 AND MR. BALWANI WAS AWARE OF THOSE EXERCISES.

12:53PM 16 Q. SO IT MAY BE THAT YOU JUST ANSWERED MY NEXT QUESTION, BUT
12:53PM 17 I'LL ASK IT ANYHOW, WHICH IS, AS THE LAB DIRECTOR, WHY DIDN'T
12:53PM 18 YOU JUST CAUSE THERANOS TO DO ALTERNATIVE PROFICIENCY THE RIGHT
12:53PM 19 WAY? WHAT, IF ANYTHING, WAS STOPPING YOU FROM FIXING THIS
12:53PM 20 PROBLEM YOURSELF?

12:53PM 21 A. I WASN'T DIRECTING INDIVIDUALS TO DO THINGS OR ASSIGNING
12:53PM 22 RESOURCES FOR SPECIFIC PROJECTS.

12:53PM 23 Q. AND WHY WAS THAT?

12:53PM 24 A. I WAS NOT GIVEN THAT AUTHORITY AT THERANOS.

12:53PM 25 Q. WHO DID HAVE THAT ROLE AT THERANOS OF ASSIGNING PEOPLE AND

12:53PM 1 ALLOCATING RESOURCES?

12:53PM 2 A. SUNNY.

12:53PM 3 Q. CAN I ASK YOU TO LOOK AT TAB 1724 IN YOUR BINDER, PLEASE.

12:54PM 4 AND DO YOU SEE --

12:54PM 5 A. I'M SORRY. GIVE ME A SEC.

12:54PM 6 Q. OF COURSE. TAKE YOUR TIME.

12:54PM 7 A. I HAVE IT.

12:54PM 8 Q. DO YOU SEE AT 1724 AN EMAIL FROM YOU TO CHINMAY PANGARKAR

12:54PM 9 IN MAY OF 2014 ABOUT PROFICIENCY TESTING FOR EDISONS?

12:54PM 10 A. YES.

12:54PM 11 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1724.

12:54PM 12 MR. COOPERSMITH: OBJECTION, 802.

12:54PM 13 MR. BOSTIC: YOUR HONOR, THE SOLE CONTENT OF THIS

12:54PM 14 EMAIL IS A QUESTION, SO I THINK BY DEFINITION IT'S NOT COMING

12:54PM 15 IN FOR ITS TRUTH.

12:54PM 16 THE COURT: OBJECTION IS OVERRULED. THIS IS

12:54PM 17 ADMISSIBLE.

12:54PM 18 THIS IS FROM MR. ROSENDORFF?

12:55PM 19 MR. BOSTIC: YES, YOUR HONOR.

12:55PM 20 THE COURT: IT'S ADMISSIBLE, AND IT MAY BE

12:55PM 21 PUBLISHED.

12:55PM 22 (GOVERNMENT'S EXHIBIT 1724 WAS RECEIVED IN EVIDENCE.)

12:55PM 23 MR. BOSTIC: THANK YOU, YOUR HONOR.

12:55PM 24 Q. LET'S LOOK AT 1724 AND ZOOM IN ON THE CONTENT.

12:55PM 25 DR. ROSENDORFF, DO YOU SEE AN EMAIL FROM YOU TO

12:55PM 1 CHINMAY PANGARKAR ON MAY 13TH, 2014?

12:55PM 2 A. YES.

12:55PM 3 Q. AND THE SUBJECT IS PT TESTING FOR EDISONS; IS THAT RIGHT?

12:55PM 4 A. YES.

12:55PM 5 Q. AND DOES THIS RELATE TO PROFICIENCY TESTING FOR THE

12:55PM 6 THERANOS ANALYZER?

12:55PM 7 A. YES, IT DOES.

12:55PM 8 Q. AND IN THE EMAIL YOU ASK FOR AN UPDATE OR ANY UPDATES ON

12:55PM 9 PLANS FOR PROFICIENCY TESTING FOR THE EDISON ASSAYS.

12:55PM 10 DO YOU SEE THAT?

12:55PM 11 A. YES.

12:55PM 12 Q. AND WHY WERE YOU ASKING CHINMAY PANGARKAR THIS QUESTION AT

12:55PM 13 THIS TIME?

12:55PM 14 A. BECAUSE DESPITE AN SOP AND AGREEMENT, OSTENSIVE AGREEMENT

12:55PM 15 THAT THIS SHOULD BE DONE, IT WASN'T BEING DONE. SO I WAS

12:55PM 16 TRYING TO EXERT SOME AUTHORITY.

12:55PM 17 Q. AND WHO WAS CHINMAY PANGARKAR SUCH THAT YOU THOUGHT IT WAS

12:55PM 18 THE RIGHT THING TO DO TO SEND HIM THIS EMAIL?

12:56PM 19 A. HE WAS AN INDIVIDUAL WHO INITIALLY HAD DEVELOPED THE CBC

12:56PM 20 ASSAY USING FLOW CYTOMETRY, AND THEN HE WAS PUT ON TO THE

12:56PM 21 EDISONS. I THINK IT WAS AFTER SUREKHA LEFT OR SHARADA LEFT,

12:56PM 22 BUT I DON'T RECALL EXACTLY.

12:56PM 23 Q. LET ME ASK A DIFFERENT WAY. WHY EMAIL CHINMAY INSTEAD OF

12:56PM 24 MR. BALWANI?

12:56PM 25 A. I DIDN'T TRUST THAT MR. BALWANI WOULD INSTRUCT CHINMAY TO

12:56PM 1 PERFORM PROFICIENCY TESTING.

12:56PM 2 Q. AND WAS THAT BASED ON YOUR PREVIOUS INTERACTIONS WITH HIM

12:56PM 3 ON THAT TOPIC?

12:56PM 4 A. YES.

12:56PM 5 Q. ONE MORE THING.

12:56PM 6 IN THE HEADER OF THIS EMAIL, DO YOU SEE A BCC FIELD?

12:57PM 7 A. YES.

12:57PM 8 Q. AND YOU BCC THIS EMAIL TO A GMAIL ADDRESS.

12:57PM 9 DO YOU SEE THAT?

12:57PM 10 A. YES.

12:57PM 11 Q. AND CAN YOU EXPLAIN WHAT IS HAPPENING THERE AND WHY THAT

12:57PM 12 IS THERE?

12:57PM 13 A. THAT'S MY PERSONAL GMAIL ADDRESS.

12:57PM 14 I HAD BECOME SO FRUSTRATED WITH MY INSTRUCTIONS NOT BEING

12:57PM 15 FOLLOWED, AND WAS ALSO STARTING TO REALIZE THAT IN THE EYES OF

12:57PM 16 THE LAW I WOULD BE HELD RESPONSIBLE, THAT I DECIDED TO FORWARD

12:57PM 17 RELEVANT EMAILS TO MY GMAIL IN THE EVENT OF A GOVERNMENT

12:57PM 18 INVESTIGATION.

12:57PM 19 Q. AND THIS WAS HAPPENING AT LEAST AS EARLY AS MAY OF 2014?

12:57PM 20 A. YES.

12:57PM 21 Q. AND YOU LEFT THE COMPANY APPROXIMATELY SIX MONTHS LATER?

12:57PM 22 A. YES.

12:57PM 23 Q. OKAY. WE CAN PUT THAT ASIDE.

12:57PM 24 AND IF I COULD ASK YOU TO TURN TO 2099.

12:58PM 25 A. I HAVE IT.

12:58PM 1 Q. OKAY. AND IS 2099 ANOTHER EMAIL BETWEEN YOU AND SOMEONE
12:58PM 2 AT THERANOS RELATING TO PROFICIENCY TESTING AND CMS REPORTING?

12:58PM 3 A. YES.

12:58PM 4 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2099.

12:58PM 5 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:58PM 6 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:58PM 7 (GOVERNMENT'S EXHIBIT 2099 WAS RECEIVED IN EVIDENCE.)

12:58PM 8 BY MR. BOSTIC:

12:58PM 9 Q. OKAY. IF WE CAN JUST ZOOM IN ON THE TOP THIRD OF THE PAGE
12:58PM 10 OR SO.

12:58PM 11 DR. ROSENDORFF, DO YOU SEE AN EMAIL FROM YOU TO

12:58PM 12 DANIEL YOUNG AND SOMEONE NAMED BRAD ARINGTON?

12:58PM 13 A. YES, I DO.

12:58PM 14 Q. AND WHO WAS BRAD ARINGTON AT THERANOS?

12:58PM 15 A. HE WAS THE IN-HOUSE COUNSEL, CHIEF COUNSEL.

12:58PM 16 Q. AND YOU WRITE IN THIS EMAIL -- OCTOBER 16TH, 2014; IS THAT
12:59PM 17 RIGHT?

12:59PM 18 A. YES.

12:59PM 19 Q. YOU SAY, "BRAD,

12:59PM 20 "I WOULD LIKE TO DE-ENROLL IN CMS REPORTING FOR THE

12:59PM 21 FOLLOWING ANALYTES BASED ON THE FACT THAT THEY ARE NO LONGER

12:59PM 22 RUN ON METHODS FOR WHICH THERE IS A PEER-GROUP (THERANOS LDT

12:59PM 23 METHODS), AND BASED ON THE FACT THAT THEY ARE NO LONGER RUN ON

12:59PM 24 PREDICATE METHODS PRIMARILY."

12:59PM 25 DO YOU SEE THAT?

12:59PM 1

A. YES.

12:59PM 2

Q. AND CAN YOU EXPLAIN WHAT THAT MEANS AND WHY YOU WERE
SENDING THIS EMAIL?

12:59PM 3

12:59PM 4

A. WHEN YOU SIGN UP WITH AMERICAN PROFICIENCY INSTITUTE OR
NEW YORK STATE, CAP, TO DO PROFICIENCY TESTING, THOSE GROUPS
REPORT THOSE RESULTS TO CMS FOR THE CMS REPORTING METHODS,
WHICH ARE LISTED LOWER DOWN IN THE EMAIL.

12:59PM 5

12:59PM 6

12:59PM 7

12:59PM 8

IN ADDITION, THE STATUTE, THE CFR CLIA STATUTE, CLEARLY
SAYS THAT YOU SHOULD RUN PROFICIENCY TESTING FOR YOUR PRIMARY
METHOD, THAT'S THE METHOD THAT YOU USE MOST OFTEN.

12:59PM 9

01:00PM 10

01:00PM 11

THIS WAS NOT THE CASE. THERANOS WAS RUNNING PROFICIENCY
TESTING ON THE PREDICATE INSTRUMENTS.

01:00PM 12

01:00PM 13

Q. AND HOW WOULD THIS EMAIL ADDRESS THAT PROBLEM?

01:00PM 14

A. WE WOULD NOT BE LEADING CMS TO BELIEVE THAT THOSE ANALYTES
WERE THE PRIMARY METHOD. IT WOULD BE MISLEADING TO CMS TO
CONTINUE TO REPORT PROFICIENCY ON THOSE ANALYTES WHEN THEY WERE
NO LONGER OUR PRIMARY METHODS.

01:00PM 15

01:00PM 16

01:00PM 17

01:00PM 18

Q. THIS IS OCTOBER 2014, ABOUT A MONTH BEFORE YOU LEFT THE
COMPANY; IS THAT RIGHT?

01:00PM 19

01:00PM 20

A. YES.

01:00PM 21

Q. IN LATE 2014, WERE THERE ANY IN-PERSON MEETINGS WITH
THERANOS MANAGEMENT ON THIS TOPIC, PROFICIENCY TESTING?

01:00PM 22

01:00PM 23

A. YES, THERE WAS A LARGE MEETING IN THE TRI-QUARTER
CONFERENCE ROOM.

01:01PM 24

01:01PM 25

Q. AND WHAT WAS THE CONTENT AND OUTCOME OF THAT MEETING?

01:01PM 1 A. IT WAS AN ATTEMPT ON MY PART TO IMPLEMENT THE ALTERNATIVE
01:01PM 2 PROFICIENCY THAT WE HAD BEEN DISCUSSING FOR MONTHS.

01:01PM 3 I LEFT THE MEETING. VARIOUS -- SUNNY SAID TO ELIZABETH,
01:01PM 4 IT'S UP TO YOU. WE CAN DE-ENROLL IN THE CMS REPORTING OR NOT.

01:01PM 5 I DIDN'T COME OUT OF THE MEETING WITH A CLEAR -- WITH
01:01PM 6 ASSIGNED TASKS LIKE YOU'RE SUPPOSED TO COME OUT OF THE MEETING
01:01PM 7 WITH ASSIGNED TASKS TO VARIOUS PEOPLE, OR A PLAN, OR JUST WITH
01:01PM 8 THE GENERAL FEELING THAT THIS WOULD EVEN BE DONE.

01:01PM 9 I FELT IT WAS LIP SERVICE.

01:02PM 10 Q. YOU SAID MR. BALWANI SAID SOMETHING ABOUT DE-ENROLLING
01:02PM 11 DURING THAT MEETING; IS THAT RIGHT?

01:02PM 12 A. YES, YES.

01:02PM 13 Q. AND WHEN HE SAID IT WAS UP TO YOU, TO WHOM WAS HE
01:02PM 14 SPEAKING?

01:02PM 15 A. TO ELIZABETH.

01:02PM 16 Q. AND FOLLOWING THAT MEETING, DID YOU SENSE ANY PROGRESS
01:02PM 17 BEING MADE IN THE RIGHT DIRECTION ON GETTING ALTERNATIVE
01:02PM 18 PROFICIENCY TESTING IMPLEMENTED AT THERANOS?

01:02PM 19 A. NO, NONE AT ALL.

01:02PM 20 Q. IN THIS EMAIL, WE SEE THAT FOUR DAYS AFTER YOU EMAILED
01:02PM 21 BRAD ARINGTON AND DANIEL YOUNG, YOU FORWARDED THAT CHAIN TO
01:02PM 22 YOUR GMAIL ADDRESS.

01:02PM 23 DO YOU SEE THAT?

01:02PM 24 A. YES.

01:02PM 25 Q. AND WAS THIS FOR THE SAME REASON THAT YOU PREVIOUSLY

01:02PM 1 DISCUSSED?

01:02PM 2 A. YES.

01:02PM 3 Q. HAD THAT PRACTICE CONTINUED THROUGHOUT THE SECOND HALF OF

01:02PM 4 2014?

01:02PM 5 A. YES.

01:02PM 6 Q. OKAY. WE CAN PUT THAT ASIDE.

01:02PM 7 AS LABORATORY DIRECTOR AT THERANOS, DID YOU HAVE ANY ROLE

01:02PM 8 IN RESPONDING TO OR MONITORING COMPLAINTS OR QUESTIONS THAT

01:03PM 9 CAME IN FROM DOCTORS AND PATIENTS?

01:03PM 10 A. YES, I DID.

01:03PM 11 Q. HOW DID YOU FIT INTO THAT PROCESS?

01:03PM 12 A. IF THE COMPLAINT HAD TO DO WITH A MEDICAL ISSUE OR IT WAS

01:03PM 13 A RESULT THAT DIDN'T MAKE SENSE, IT WOULD BE ESCALATED TO ME,

01:03PM 14 AND I WOULD BE ASKED TO TALK TO THE CLINICIAN.

01:03PM 15 Q. WHO ELSE WAS INVOLVED IN THAT ASPECT OF THERANOS'S

01:03PM 16 BUSINESS? AND I'M TALKING SPECIFICALLY ABOUT RESPONDING TO

01:03PM 17 DOCTORS AND PATIENTS WHO MIGHT HAVE CONCERNS OR QUESTIONS ABOUT

01:03PM 18 THE THERANOS TEST RESULTS.

01:03PM 19 A. THE FIRST POINT OF CONTACT WOULD BE A CUSTOMER SERVICE

01:03PM 20 REP. I THINK HER NAME WAS ANNA.

01:03PM 21 ELIZABETH'S BROTHER, CHRISTIAN, WAS REALLY THE ONE WHO

01:03PM 22 BROKERED THOSE CONVERSATIONS.

01:03PM 23 Q. AND WHAT WAS CHRISTIAN HOLMES'S JOB OR POSITION AT THE

01:04PM 24 COMPANY, IF YOU RECALL?

01:04PM 25 A. HE INITIALLY WAS INVOLVED WITH THE ARIZONA ROLLOUTS, AND

01:04PM 1 THEN HE GOT PUT ON TO THIS CUSTOMER COMPLAINT ROLE.

01:04PM 2 Q. AND DID CHRISTIAN HOLMES HAVE A POSITION WITHIN THE
01:04PM 3 THERANOS CLINICAL LAB?

01:04PM 4 A. NO, HE DID NOT.

01:04PM 5 Q. AND DID CHRISTIAN HOLMES HAVE A SCIENCE OR MEDICAL
01:04PM 6 BACKGROUND AS YOU UNDERSTOOD IT?

01:04PM 7 A. NO, HE DID NOT.

01:04PM 8 Q. AND WHAT WAS CHRISTIAN HOLMES'S ROLE IN HANDLING
01:04PM 9 COMPLAINTS FROM DOCTORS AND PATIENTS?

01:04PM 10 A. HE WOULD DECIDE WHAT HAD TO BE ESCALATED TO ME, AND HE
01:04PM 11 WOULD COMMUNICATE THESE QUERIES OR COMPLAINTS TO ME, AND HE
01:04PM 12 WOULD ALSO MAKE SURE THAT THEY HAD BEEN ADDRESSED.

01:04PM 13 Q. AND ONCE HE HANDED AN ISSUE OFF TO YOU, DID HE THEN STAND
01:04PM 14 BACK AND LET YOU MAKE THE DECISIONS YOU THOUGHT WERE
01:04PM 15 APPROPRIATE, OR DID HE HAVE SOME INFLUENCE IN HOW THOSE ISSUES
01:04PM 16 WERE HANDLED?

01:04PM 17 A. WELL, MY JOB WAS BASICALLY TO TRY TO EXPLAIN AWAY LAB
01:05PM 18 RESULTS THAT DIDN'T MAKE SENSE USING, WHAT MEDICATIONS WAS THE
01:05PM 19 PATIENT ON? WHAT WAS THE METHOD THAT WAS USED? MAYBE THERE
01:05PM 20 WAS A DIFFERENT METHOD.

01:05PM 21 I WAS PRESSURED TO COME UP WITH OTHER EXPLANATIONS ABOUT
01:05PM 22 WHY LAB TESTS DIDN'T MAKE SENSE.

01:05PM 23 AND AT ONE POINT I REFUSED TO TRY TO DO THE SPIN AND SAID
01:05PM 24 I WOULDN'T BE TALKING TO THE DOCTOR ANYMORE.

01:05PM 25 AND THEN HE ESCALATED THAT TO HIS SISTER, ELIZABETH.

01:05PM 1 Q. OKAY. WHEN YOU SAY THAT YOUR JOB WAS TO EXPLAIN AWAY TEST
01:05PM 2 RESULTS, DO YOU MEAN THAT THAT'S A NORMAL, APPROPRIATE PART OF
01:05PM 3 THE JOB OF THE LAB DIRECTOR?

01:05PM 4 A. NO. THE NORMAL JOB OF THE LAB DIRECTOR IS TO TAKE THESE
01:05PM 5 COMPLAINTS VERY SERIOUSLY.

01:05PM 6 IT'S NOT JUST THAT I WOULD EXPLAIN THEM AWAY. I WOULD
01:05PM 7 ALSO DO A THOROUGH TECHNICAL REVIEW TO SEE IF ANYTHING HAD GONE
01:06PM 8 WRONG IN THE PROCESS OF TESTING THESE SAMPLE.

01:06PM 9 Q. YOU TALKED ABOUT FEELING PRESSURE TO ENGAGE IN THAT
01:06PM 10 EXPLAINING AWAY.

01:06PM 11 WHERE DID THAT PRESSURE COME FROM?

01:06PM 12 A. FROM SUNNY AND ELIZABETH.

01:06PM 13 Q. YOU TESTIFIED THAT YOU WERE ALSO A LABORATORY DIRECTOR AT
01:06PM 14 UNIVERSITY OF PITTSBURGH BEFORE COMING TO THERANOS; IS THAT
01:06PM 15 RIGHT?

01:06PM 16 A. YES.

01:06PM 17 Q. AND HOW DID THIS PART OF THE JOB COMPARE BETWEEN THOSE TWO
01:06PM 18 PLACES? FOR EXAMPLE, IN TERMS OF FREQUENCY OF COMPLAINTS FROM
01:06PM 19 DOCTORS AND PATIENTS ABOUT RESULTS, DID YOU SEE THAT HAPPENING
01:06PM 20 MORE COMMONLY AT THERANOS OR LESS COMMONLY AS COMPARED TO THE
01:06PM 21 PITTSBURGH LAB?

01:06PM 22 A. MUCH MORE COMMONLY AT THERANOS.

01:06PM 23 ALSO WITH A MUCH LOWER TESTING VOLUME.

01:06PM 24 Q. AND HOW DOES THE TESTING VOLUME PLAY INTO HOW CONCERNING
01:07PM 25 THIS WAS FOR YOU?

01:07PM 1 A. WELL, THE MORE TESTS YOU RUN, THE MORE COMPLAINTS YOU'RE
01:07PM 2 GOING TO GET. IT'S JUST THAT'S HOW THE NUMBERS WORK.

01:07PM 3 IF 3 PERCENT OF TESTS HAVE PROBLEMS, THE MORE TESTS YOU
01:07PM 4 RUN, THAT 3 PERCENT IS A LARGER NUMBER.

01:07PM 5 AT PITTSBURGH WE RAN MANY MORE TESTS AND HAD FAR FEWER
01:07PM 6 COMPLAINTS.

01:07PM 7 Q. HOW ABOUT IN TERMS OF RESPONDING TO THOSE COMPLAINTS? DID
01:07PM 8 THINGS WORK DIFFERENTLY AT THERANOS VERSUS UNIVERSITY OF
01:07PM 9 PITTSBURGH AS FAR AS YOUR FREEDOM TO COMMUNICATE WITH DOCTORS
01:07PM 10 AND PATIENTS AND WHAT YOU SAID TO THEM?

01:07PM 11 A. YES. MY COMMUNICATION WITH THE DOCTORS WAS NOT MONITORED,
01:07PM 12 POLICED, ENFORCED, ET CETERA, AT PITTSBURGH. I WAS FREE TO
01:07PM 13 MEET WITH THE DOCTORS IN MY OFFICE ONE ON ONE.

01:08PM 14 Q. LET'S LOOK AT SOME EXAMPLES OF SPECIFIC PATIENT RESULTS
01:08PM 15 THAT YOU REVIEWED WHILE YOU WERE AT THERANOS.

01:08PM 16 I'D LIKE TO START BY TALKING ABOUT THE HCG ASSAY. WHAT IS
01:08PM 17 THE HCG ASSAY AND WHAT IS ITS CLINICAL USE?

01:08PM 18 A. HCG STANDS FOR HUMAN CHORIONIC GONADOTROPIN.

01:08PM 19 IT'S THE PREGNANCY HORMONE. IT'S USED TO DETECT
01:08PM 20 PREGNANCIES.

01:08PM 21 Q. AND DID THERANOS OFFER AN HCG TEST DURING YOUR TIME AS LAB
01:08PM 22 DIRECTOR?

01:08PM 23 A. YES.

01:08PM 24 Q. AND DO YOU RECALL WHAT DEVICE THERANOS USED TO PERFORM THE
01:08PM 25 HCG TEST?

01:08PM 1 A. IT STARTED OFF ON THE IMMULITE AND THEN WENT OVER TO THE
01:08PM 2 EDISON.
01:08PM 3 Q. DURING YOUR TIME AT THERANOS, DID YOU SEE PROBLEMS WITH
01:08PM 4 THE ACCURACY OF THE HCG TESTS ON THE EDISON?
01:08PM 5 A. YES, I DID.
01:08PM 6 Q. CAN I ASK YOU TO LOOK AT TAB 4836, PLEASE.
01:09PM 7 A. I HAVE IT. I HAVE IT.
01:09PM 8 Q. OKAY. AND LET'S START ON, LET'S SEE, PAGE 6, PLEASE.
01:09PM 9 AND, FIRST OF ALL, IS THIS AN EMAIL CHAIN BETWEEN YOU AND
01:09PM 10 OTHER INDIVIDUALS AT THERANOS ABOUT PRECISION OF THE HCG ASSAY?
01:09PM 11 A. JUST GIVE ME A SECOND SO I CAN SCROLL BACK TO THE
01:09PM 12 BEGINNING.
01:09PM 13 Q. OF COURSE.
01:09PM 14 A. WHOOPS.
01:09PM 15 YES, THE SUBJECT IS HCG PRECISION.
01:09PM 16 Q. AND DO YOU SEE THAT BOTH MR. BALWANI AND MS. HOLMES ARE ON
01:09PM 17 THIS EMAIL CHAIN?
01:09PM 18 A. YES.
01:09PM 19 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4836.
01:09PM 20 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.
01:10PM 21 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
01:10PM 22 (GOVERNMENT'S EXHIBIT 4836 WAS RECEIVED IN EVIDENCE.)
01:10PM 23 BY MR. BOSTIC:
01:10PM 24 Q. AND LET'S GO TO PAGE 6 TO THE ORIGINAL EMAIL ON THIS
01:10PM 25 CHAIN.

01:10PM 1 DO YOU SEE THIS BEGINS WITH AN EMAIL THAT YOU'RE NOT ON TO
01:10PM 2 DANIEL YOUNG AND TO KARTHIK JAYASURYA.

01:10PM 3 AND SHARADA SIVARAMAN WRITES, "DID YOU HAVE A CHANCE TO GO
01:10PM 4 OVER HCG PRECISION DATA?"

01:10PM 5 AND THEN IT SAYS, "I AM CONCERNED ABOUT THE PROGRESSIVE
01:10PM 6 JUMP IN SIGNAL THAT WE SAW AND WANTED TO KNOW AHEAD OF TIME IF
01:10PM 7 A REPEAT EXERCISE IS REQUIRED."

01:10PM 8 DO YOU SEE THAT?

01:10PM 9 A. YES.

01:10PM 10 Q. LET'S LOOK AT PAGE 5, AND THE BOTTOM OF THE PAGE TO
01:10PM 11 CAPTURE THAT BOTTOM MESSAGE.

01:10PM 12 WE SEE HERE KARTHIK WRITES BACK, "ACCORDING TO DOCUMENT
01:11PM 13 SENT BY ADAM, DECISION LEVELS ARE AS FOLLOWS?"

01:11PM 14 DO YOU SEE THAT?

01:11PM 15 A. YES.

01:11PM 16 Q. AND CAN YOU ORIENT US HERE, WHAT STAGE IN THE PROCESS WAS
01:11PM 17 THIS, AND DO YOU RECALL WHAT KIND OF INFORMATION YOU WOULD HAVE
01:11PM 18 BEEN PROVIDING AT THIS STAGE?

01:11PM 19 A. YEAH, ABSOLUTELY.

01:11PM 20 THIS IS DURING PRE-VALIDATION WHERE MY ROLE IS TO SAY WHAT
01:11PM 21 LEVELS OF THIS PREGNANCY HORMONE ARE CLINICALLY SIGNIFICANT OR
01:11PM 22 ARE USED AS TRIGGERS TO MAKE A CLINICAL DECISION?

01:11PM 23 AND ONE LEVEL THAT IS REALLY IMPORTANT IS THAT LEVEL OF 5,
01:11PM 24 BECAUSE ABOVE THAT LEVEL A WOMAN IS PREGNANT.

01:11PM 25 Q. OKAY. LET'S LOOK AT PAGE 4. SO WE'RE MOVING FORWARD IN

01:11PM 1 TIME, AND WE SEE SOME EMAILS FROM YOU IN THIS EMAIL CHAIN.

01:11PM 2 AND DO YOU SEE GENERALLY THERE IS DISCUSSION ABOUT THOSE

01:11PM 3 DECISION LEVELS, WHAT ARE THE IMPORTANT CONCENTRATIONS FOR THIS

01:12PM 4 ANALYTE?

01:12PM 5 A. YES.

01:12PM 6 Q. OKAY. AND DO YOU SEE THAT DANIEL YOUNG ASKS YOU ABOUT

01:12PM 7 ALLOWABLE ERRORS AT EACH OF THOSE LEVELS?

01:12PM 8 A. YES.

01:12PM 9 Q. AND WHAT DOES THAT MEAN?

01:12PM 10 A. THE ALLOWABLE ERROR IS THE -- HOW MUCH ERROR OR INACCURACY

01:12PM 11 IN THE TEST IS GOING TO BE ALLOWED, AND IT'S THE SUM OF THE CV

01:12PM 12 OF PRECISION AND THE ACCURACY OR THE BIAS AS I'VE DISCUSSED

01:12PM 13 PREVIOUS.

01:12PM 14 Q. OKAY. LET'S LOOK AT THE TOP OF PAGE 3 IN THIS CHAIN.

01:12PM 15 AND DO YOU SEE THERE'S AN EMAIL FROM KARTHIK JAYASURYA TO

01:12PM 16 YOU AND OTHERS WHERE HE ASKS YOU, "IS THERE A WAY WE CAN RELAX

01:12PM 17 THE TAE CRITERIA AT THIS 50 LEVEL CONCENTRATION?"

01:12PM 18 DO YOU SEE THAT?

01:12PM 19 A. YES.

01:12PM 20 Q. AND IT SAYS, "CURRENTLY, OUR PRECISION STANDS AT

01:13PM 21 23 PERCENT WHICH IS MUCH MORE THAN TAE (15 PERCENT)."

01:13PM 22 A. YES.

01:13PM 23 Q. CAN YOU EXPLAIN WHAT THIS MEANS?

01:13PM 24 A. SO TAE IS THE SUM OF THE PRECISION AND ACCURACY.

01:13PM 25 HERE THE PRECISION IS ALREADY 23 PERCENT, WHICH IS HIGHER

01:13PM 1 THAN THE TOTAL ERROR THAT IS ALLOWABLE, SO AT THIS DECISION
01:13PM 2 LEVEL, THE VALIDATION IS FAILING.

01:13PM 3 Q. OKAY. LET'S LOOK AT YOUR RESPONSE ON PAGE 2.

01:13PM 4 AND YOU WRITE IN YOUR EMAIL BACK AT THE BOTTOM OF THE
01:13PM 5 FIRST PARAGRAPH THERE, "MY CONCERN WITH RELAXING THE TOTAL
01:13PM 6 ALLOWABLE ERROR AROUND OR NEAR A DECISION POINT IS MAKING THE
01:13PM 7 WRONG CALL FOR A PATIENT."

01:13PM 8 DO YOU SEE THAT?

01:13PM 9 A. YES.

01:13PM 10 Q. AND THEN BELOW THAT YOU INCLUDE THE CV'S FOR THE IMMULITE
01:13PM 11 ASSAY; IS THAT CORRECT?

01:13PM 12 A. YES.

01:13PM 13 Q. OKAY. AND IF WE JUST LOOK AT THAT TABLE BRIEFLY.

01:13PM 14 DO YOU SEE FOR THE IMMULITE ASSAY, THE CV NUMBERS WERE
01:14PM 15 SIGNIFICANTLY LOWER THAN WHAT THERANOS WAS SEEING FOR ITS HCG
01:14PM 16 ASSAY AT THIS TIME?

01:14PM 17 A. YES.

01:14PM 18 Q. LET'S GO TO PAGE 1. LET'S LOOK AT THE BOTTOM OF THAT
01:14PM 19 PAGE.

01:14PM 20 AND SHARADA SIVARAMAN EMAILS MR. BALWANI INDIVIDUALLY
01:14PM 21 ABOUT THIS ON OCTOBER 30TH, 2013.

01:14PM 22 DO YOU SEE THAT?

01:14PM 23 A. YES.

01:14PM 24 Q. AND THE SUBJECT LINE IS HCG PRECISION.

01:14PM 25 AND SHE WRITES TO TELL HIM, "THE REPEAT EXERCISE OF ENTIRE

01:14PM 1 PRECISION WAS COMPLETED ON TUESDAY AND THE DATA WAS SENT OUT TO
01:14PM 2 DANIEL AND KARTHIK."

01:14PM 3 SHE THEN SAYS, "WE STILL DO NOT PASS AT THE THIRD
01:14PM 4 PRECISION LEVEL BECAUSE OUR PRECISION AT THAT LEVEL IS
01:14PM 5 23 PERCENT BUT WE ARE ONLY ALLOWED TAE OF 15 PERCENT."

01:15PM 6 DO YOU SEE MR. BALWANI BEING INFORMED OF THAT?

01:15PM 7 A. YES, I SEE THAT.

01:15PM 8 Q. ABOVE THAT MESSAGE, HE THEN EMAILS DANIEL YOUNG,
01:15PM 9 SAMARTHA ANEKAL, AND ELIZABETH HOLMES, NOTING THAT THE
01:15PM 10 PRECISION HAD BEEN RUN TWICE AT THAT POINT.

01:15PM 11 DO YOU SEE THAT?

01:15PM 12 A. YES.

01:15PM 13 Q. AND HE ASKS OTHERS TO LOOK INTO IT AND FIGURE OUT WHY THE
01:15PM 14 COMPANY IS MISSING THAT.

01:15PM 15 DO YOU SEE THAT?

01:15PM 16 A. YES.

01:15PM 17 Q. LET'S CONTINUE TO TRACK SOME ISSUES WITH THE HCG ASSAY.

01:15PM 18 LET'S GO TO TAB 4145 IN YOUR BINDER NEXT.

01:15PM 19 A. I HAVE IT.

01:15PM 20 Q. AND AT 4145, DO YOU SEE AN EMAIL CHAIN INCLUDING
01:16PM 21 INDIVIDUALS AT THERANOS AND INCLUDING MR. BALWANI AND
01:16PM 22 MS. HOLMES RELATING TO HCG RESULTS?

01:16PM 23 A. YES.

01:16PM 24 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4145.

01:16PM 25 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:16PM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:16PM 2 (GOVERNMENT'S EXHIBIT 4145 WAS RECEIVED IN EVIDENCE.)

01:16PM 3 BY MR. BOSTIC:

01:16PM 4 Q. LET'S START AT THE BOTTOM HALF OF PAGE 3.

01:16PM 5 DO YOU SEE THAT THIS BEGINS WITH AN EMAIL FROM SOMEONE

01:16PM 6 NAMED AMELIA AGUIRRE TO CLS@THERANOS.COM?

01:16PM 7 A. YES.

01:16PM 8 Q. AND DO YOU KNOW WHAT CLS STANDS FOR AT THE COMPANY?

01:16PM 9 A. CLS IS CLINICAL LABORATORY SCIENTISTS. THESE ARE PEOPLE

01:16PM 10 WITH TRAINING AND CERTIFICATION TO RELEASE PATIENT RESULTS.

01:16PM 11 Q. OKAY. AND THIS EMAIL SAYS, "PHYSICIAN IS CALLING ABOUT

01:17PM 12 RESULTS FOR HCG. NOTES IN LIS INDICATE HCG RESULTS ARE OORL,

01:17PM 13 DO NOT RELEASE UNTIL FURTHER NOTICE."

01:17PM 14 DO YOU SEE THAT?

01:17PM 15 A. YES.

01:17PM 16 Q. AND WHAT WAS HAPPENING HERE? AND WHAT DOES OORL MEAN?

01:17PM 17 A. OORL IS OUT OF REFERENCE RANGE LOW.

01:17PM 18 Q. AND WHAT WOULD THE SIGNIFICANCE OF THAT BE IN CONNECTION

01:17PM 19 WITH THIS KIND OF HCG TEST?

01:17PM 20 A. CORRECTION. OORL IS OUT OF REPORTABLE RANGE LOW.

01:17PM 21 THE SIGNIFICANCE WAS THAT THE LABORATORY INFORMATION

01:17PM 22 SYSTEM HAD FLAGGED THIS RESULT AND THAT THE CLS HAD CAUGHT

01:17PM 23 THIS, AND SHE'S SAYING, YOU KNOW, DON'T RELEASE THIS UNTIL

01:17PM 24 FURTHER NOTICE.

01:17PM 25 Q. OKAY. LET'S LOOK AT THE TOP OF PAGE 3.

01:17PM 1 AND WE SEE SOME MORE DETAILS REPORTED ABOUT THIS HCG

01:18PM 2 RESULT; CORRECT?

01:18PM 3 A. YES.

01:18PM 4 Q. AND IT READS, "IN ESSENCE, THE HCG VALUE FOR THIS PATIENT

01:18PM 5 WAS HIGH ON MAY 21ST (INDICATING PREGNANCY) AND THEN DROPPED

01:18PM 6 VERY VERY LOW ON MAY 23RD, POSSIBLY INDICATING A MISCARRIAGE OR

01:18PM 7 ABORTION."

01:18PM 8 DO YOU SEE THAT?

01:18PM 9 A. YES.

01:18PM 10 Q. AND IT SAYS, "SO WE WANT TO BE CAREFUL WITH THIS ONE."

01:18PM 11 DID I READ THAT CORRECTLY?

01:18PM 12 A. YES.

01:18PM 13 Q. OKAY. LET'S GO TO PAGE 2 AND ZOOM IN ON THE TOP

01:18PM 14 TWO-THIRDS OF THE PAGE.

01:18PM 15 DO YOU SEE THERE'S A MESSAGE FROM MR. BALWANI TO

01:18PM 16 DANIEL YOUNG ABOUT THIS RESULT?

01:18PM 17 HE SAYS, "PLEASE KEEP ME IN LOOP ON THIS. I ASSUME THIS

01:18PM 18 WAS RUN ON EDISONS?"

01:18PM 19 DO YOU SEE THAT?

01:18PM 20 A. YES.

01:18PM 21 Q. AND AROUND THIS TIME, WAS THERANOS OFFERING AN HCG TEST ON

01:18PM 22 ITS EDISON ANALYZER?

01:19PM 23 A. YES.

01:19PM 24 Q. AND LET'S LOOK AT THE TOP OF THIS PAGE. ACTUALLY, WE'RE

01:19PM 25 THERE ALREADY.

01:19PM 1 WE SEE THERE'S A RESPONSE TO MR. BALWANI INDICATING, YES,
01:19PM 2 THE TEST WAS RUN ON EDISONS.

01:19PM 3 DO YOU SEE THAT?

01:19PM 4 A. YES.

01:19PM 5 Q. LET'S GO TO PAGE 1 AND LOOK AT THE TOP HALF.

01:19PM 6 DO YOU SEE HERE THAT DANIEL YOUNG GIVES MR. BALWANI SOME
01:19PM 7 MORE INFORMATION ABOUT THIS HCG RESULT AND HE SAYS, "PHYSICIAN
01:19PM 8 NOTED THAT IT WOULD BE SURPRISING TO SEE THE COUNT DROP SO
01:19PM 9 MUCH, EVEN WITH A MISCARRIAGE. HENCE THE AGREEMENT TO COLLECT
01:19PM 10 ANOTHER SAMPLE."

01:19PM 11 DO YOU SEE THAT?

01:19PM 12 A. YES.

01:19PM 13 Q. AND THEN AT THE TOP OF THE PAGE MS. HOLMES WRITES TO
01:19PM 14 MR. BALWANI INDIVIDUALLY, AND SHE SAYS, "I'VE DONE MANY
01:19PM 15 MEETINGS ON THIS TODAY."

01:19PM 16 DO YOU SEE THAT?

01:19PM 17 A. YES.

01:19PM 18 Q. OKAY. WE CAN PUT THAT ASIDE.

01:20PM 19 LET'S LOOK AT 4147.

01:20PM 20 A. OKAY.

01:20PM 21 Q. AROUND THIS TIME PERIOD, SO IN MAY OF 2014, DID YOU HAVE
01:20PM 22 CONCERNS AS LABORATORY DIRECTOR ABOUT THE ACCURACY AND
01:20PM 23 RELIABILITY OF THERANOS'S HCG ASSAY?

01:20PM 24 A. YES, I DID.

01:20PM 25 Q. AND WHAT WERE THOSE CONCERNS BASED ON?

01:20PM 1 A. MY CONCERNS WERE BASED ON WILDLY FLUCTUATING HCG LEVELS ON
01:20PM 2 ORIGINAL TESTING AND RETESTING EVEN ON THE SAME SAMPLE, AND
01:20PM 3 ALSO ON CONSECUTIVE SAMPLES.

01:20PM 4 Q. AT 4147, ARE WE LOOKING AT AN EMAIL FROM YOU TO OTHERS AT
01:20PM 5 THERANOS RELAYING A DECISION BASED ON THOSE CONCERNS?

01:20PM 6 A. YES.

01:20PM 7 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4147.

01:20PM 8 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:20PM 9 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:21PM 10 (GOVERNMENT'S EXHIBIT 4147 WAS RECEIVED IN EVIDENCE.)

01:21PM 11 BY MR. BOSTIC:

01:21PM 12 Q. OKAY. AND LET'S ZOOM IN ON YOUR FIRST EMAIL ON THE BOTTOM
01:21PM 13 OF THE PAGE.

01:21PM 14 YOU SENT AN EMAIL ON FRIDAY, MAY 30TH, 2014, AND IT SAYS
01:21PM 15 TO CLS.

01:21PM 16 WAS THIS TO ONE PERSON OR MORE THAN ONE?

01:21PM 17 A. IT WAS TO THE CLS GROUP EMAIL.

01:21PM 18 Q. AND THE SUBJECT IS HCG TESTING, AND YOU MARK IT HIGH
01:21PM 19 IMPORTANCE.

01:21PM 20 DO YOU SEE THAT?

01:21PM 21 A. YES.

01:21PM 22 Q. AND YOU WRITE IN ALL CAPS, "NUMBER 1, ALL FURTHER HCG
01:21PM 23 TESTING (CTN OR VACUTAINER) IS TO BE RUN ON THE IMMULITE."

01:21PM 24 DO YOU SEE THAT?

01:21PM 25 A. YES.

01:21PM 1 Q. AND NUMBER 2 SAYS, "HOLD ALL EDISON CTN RESULTS -- DO NOT
01:21PM 2 RELEASE."

01:21PM 3 DO YOU SEE THAT?

01:21PM 4 A. YES.

01:21PM 5 Q. AND WHAT DECISION WERE YOU MAKING HERE, AND WHY?

01:21PM 6 A. I WAS MAKING THE DECISION TO DISCONTINUE HCG TESTING ON
01:21PM 7 THE EDISON BECAUSE I DIDN'T TRUST IT, AND TO MOVE IT ON TO THE
01:22PM 8 IMMULITE, BACK ON TO THE IMMULITE.

01:22PM 9 Q. AND WAS THIS SOMETHING THAT YOU DID LIGHTLY OR IMPULSIVELY
01:22PM 10 AT THERANOS AS LAB DIRECTOR?

01:22PM 11 A. NO. I KNEW IT WAS GOING TO BE A VERY, VERY UNPOPULAR
01:22PM 12 DECISION.

01:22PM 13 Q. WHAT MADE YOU THINK THAT THIS WAS GOING TO BE AN UNPOPULAR
01:22PM 14 DECISION, AND WHO DID YOU THINK IT WAS GOING TO BE UNPOPULAR
01:22PM 15 WITH?

01:22PM 16 A. WITH SUNNY AND ELIZABETH. THEY WERE REALLY PUSHING FOR
01:22PM 17 MORE AND MORE TESTS TO BE RUN ON THE EDISONS.

01:22PM 18 Q. SO DESPITE KNOWING THAT IT WAS GOING TO BE UNPOPULAR WITH
01:22PM 19 YOUR BOSSES, WHY DID YOU DECIDE TO MAKE THIS DECISION AND SEND
01:22PM 20 THIS EMAIL?

01:22PM 21 A. TO PROTECT WOMEN.

01:22PM 22 Q. ARE YOU TALKING ABOUT THE PATIENTS WHO WERE RELYING ON
01:22PM 23 THERANOS?

01:22PM 24 A. THE PATIENTS, YES.

01:22PM 25 Q. LET'S ZOOM OUT AND LOOK AT THE TOP PORTION OF THIS PAGE.

01:22PM 1 AND DO YOU SEE AT THE TOP MR. BALWANI FORWARDS THE EMAIL

01:23PM 2 THAT YOU SENT TO CLS TO MS. HOLMES INDIVIDUALLY?

01:23PM 3 DO YOU SEE THAT?

01:23PM 4 A. YES.

01:23PM 5 Q. DO YOU KNOW WHETHER MR. BALWANI WAS PART OF THE CLS EMAIL

01:23PM 6 GROUP?

01:23PM 7 A. I DO NOT RECALL.

01:23PM 8 Q. DID MR. BALWANI HAVE A POSITION WITHIN THE THERANOS

01:23PM 9 CLINICAL LAB?

01:23PM 10 A. NO, HE DID NOT.

01:23PM 11 Q. TO BE A CLS --

01:23PM 12 A. JUST A CLARIFICATION. HE DID NOT HAVE A -- HE WAS NOT ON

01:23PM 13 THE ROSTER, THE LIST OF PERSONNEL THAT WE SENT TO CMS.

01:23PM 14 Q. WHAT DOES CLS STAND FOR?

01:23PM 15 A. CMS? I'M SORRY?

01:23PM 16 Q. CLS.

01:23PM 17 A. OH, CLS. CLINICAL LABORATORY SCIENTIST.

01:23PM 18 Q. AND DOES A CLINICAL LABORATORY SCIENTIST HAVE TO HAVE

01:23PM 19 CERTAIN CREDENTIALS OR QUALIFICATIONS?

01:23PM 20 A. YES.

01:23PM 21 Q. AND WHAT ARE THOSE?

01:23PM 22 A. THEY HAVE TO HAVE COMPLETED TRAINING IN A -- CLS IS A

01:24PM 23 CALIFORNIA SPECIFIC QUALIFICATION. IT'S RECOGNIZED BY

01:24PM 24 LABORATORY FIELD SERVICES, PART OF CALIFORNIA DEPARTMENT OF

01:24PM 25 PUBLIC HEALTH.

01:24PM 1 THOSE FOLKS HAVE TO GO THROUGH A TRAINING PROGRAM, THEY
01:24PM 2 HAVE TO TAKE AN EXAM.

01:24PM 3 Q. DID MR. BALWANI HAVE THOSE QUALIFICATIONS AS YOU
01:24PM 4 UNDERSTOOD IT?

01:24PM 5 A. NO, HE DID NOT.

01:24PM 6 Q. WAS MR. BALWANI A CLINICAL LAB SCIENTIST AT THERANOS AS
01:24PM 7 FAR AS YOU KNEW?

01:24PM 8 A. NO, HE WAS NOT.

01:24PM 9 Q. OKAY. WE CAN PUT THAT ASIDE.

01:24PM 10 AND LET'S GO TO 4840.

01:24PM 11 LET ME ASK, AS YOU TURN THERE, DO YOU REMEMBER ANY
01:24PM 12 IN-PERSON CONVERSATIONS WITH MR. BALWANI OR MS. HOLMES AROUND
01:24PM 13 THIS TIME PERIOD ABOUT HCG TESTING?

01:24PM 14 A. YES.

01:25PM 15 Q. WHAT DO YOU REMEMBER ABOUT THOSE CONVERSATIONS?

01:25PM 16 A. I REMEMBER ENCOUNTERING ELIZABETH IN THE FRONT SECTION OF
01:25PM 17 THE OFFICE IN PALO ALTO AND HER ASKING ME HOW THINGS ARE GOING
01:25PM 18 AND ME SAYING THAT I WAS FREAKING OUT.

01:25PM 19 Q. AND DID YOU EXPLAIN WHAT YOU WERE FREAKING OUT ABOUT WHEN
01:25PM 20 MS. HOLMES ASKED YOU?

01:25PM 21 A. YES.

01:25PM 22 Q. AND WHAT DID YOU TELL HER?

01:25PM 23 A. I TOLD HER THAT OUR HCG TESTING WAS CAUSING HARM.

01:25PM 24 Q. AND HOW DID MS. HOLMES REACT TO HEARING FROM HER LAB
01:25PM 25 DIRECTOR THAT THE THERANOS HCG TEST WAS CAUSING HARM?

01:25PM 1 A. SHE SEEMED FAIRLY COMPOSED, THAT IT WAS JUST ANOTHER
01:25PM 2 PROBLEM TO SOLVE.

01:25PM 3 Q. AND GOING FORWARD, FOLLOWING YOUR EMAIL WHERE YOU DECIDED
01:26PM 4 TO STOP USING THE THERANOS ANALYZER FOR HCG TESTING --

01:26PM 5 A. YES.

01:26PM 6 Q. -- DID THERANOS, IN FACT, CEASE ALL USE OF THE EDISON FOR
01:26PM 7 HCG?

01:26PM 8 A. MY UNDERSTANDING WAS NO, THAT IT WENT BACK ON THE IMMULITE
01:26PM 9 WITHOUT MY KNOWLEDGE.

01:26PM 10 Q. YOU SAID IT WENT BACK ON THE IMMULITE --

01:26PM 11 A. I'M SORRY. IT WENT BACK ON THE EDISON WITHOUT MY
01:26PM 12 KNOWLEDGE.

01:26PM 13 Q. OKAY. LET'S LOOK AT 4840.
01:26PM 14 DO YOU HAVE THAT IN FRONT OF YOU?

01:26PM 15 A. YES.

01:26PM 16 Q. AND IS THIS ANOTHER EMAIL CHAIN INTERNALLY AT THERANOS,
01:26PM 17 INCLUDING MR. BALWANI, AND RELATING TO THE STATUS OF SOME HCG
01:26PM 18 RESULTS?

01:26PM 19 A. YES.

01:26PM 20 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4840.

01:26PM 21 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:27PM 22 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
01:27PM 23 (GOVERNMENT'S EXHIBIT 4840 WAS RECEIVED IN EVIDENCE.)

01:27PM 24 BY MR. BOSTIC:

01:27PM 25 Q. OKAY. AND WE'VE REDACTED SOME PATIENT INFORMATION HERE,

01:27PM 1 DR. ROSENDORFF, SO I'LL ASK YOU NOT TO READ OUT LOUD THAT
01:27PM 2 PORTION OF IT.

01:27PM 3 BUT LOOKING AT PAGE 3, DO YOU SEE THAT THERE IS AN EMAIL
01:27PM 4 FROM AMELIA AGUIRRE ABOUT A PHYSICIAN LOOKING FOR RESULTS FOR A
01:27PM 5 PATIENT WITH AN HCG TEST?

01:27PM 6 A. YES.

01:27PM 7 Q. OKAY. AND LET'S LOOK ABOVE THAT AT THE RESPONSE FROM
01:27PM 8 ROMINA RIENER.

01:27PM 9 DO YOU SEE THAT SHE WRITES, "WE RAN THAT SAMPLE YESTERDAY
01:27PM 10 BUT THE RESULTS CAME OUT INVALID (FAILED RUN). IT IS STILL
01:27PM 11 PENDING A RERUN."

01:27PM 12 DO YOU SEE THAT?

01:27PM 13 A. YES.

01:27PM 14 Q. AND WHAT WAS A FAILED RUN OR AN INVALID RESULT ON AN
01:27PM 15 EDISON?

01:27PM 16 A. IT BASICALLY MEANS THAT THE EDISON EITHER ABORTED BEFORE
01:28PM 17 IT COULD COMPLETE THE RUN, OR IT DIDN'T PRODUCE ACCEPTABLE DATA
01:28PM 18 WITHIN THE INSTRUMENT.

01:28PM 19 Q. OKAY. LET'S KEEP FOLLOWING THIS CHAIN AND GO TO PAGE 2,
01:28PM 20 SO MOVING FORWARD IN TIME.

01:28PM 21 AND LET'S ZOOM IN ON THE BOTTOM THIRD OF THE PAGE.

01:28PM 22 DO YOU SEE AN EMAIL FROM MAX FOSQUE THAT SAYS "I BELIEVE
01:28PM 23 TINA JUST BROUGHT THIS UPSTAIRS, WE CAN RUN NEAT ON THE
01:28PM 24 IMMULITE."

01:28PM 25 DO YOU SEE THAT?

01:28PM 1 A. YES.

01:28PM 2 Q. AND CAN YOU REMIND US WHAT PARTS OF THE LAB WERE UPSTAIRS

01:28PM 3 VERSUS DOWNSTAIRS?

01:28PM 4 A. UPSTAIRS SUNNY CALLED IT JURASSIC PARK. IT WAS THE FDA

01:28PM 5 APPROVED INSTRUMENTS, FDA APPROVED INSTRUMENTS.

01:28PM 6 Q. IN OTHER WORDS, THE NON-THERANOS COMMERCIALLY AVAILABLE

01:28PM 7 DEVICES?

01:28PM 8 A. RIGHT.

01:28PM 9 Q. AND WAS THE IMMULITE ONE OF THOSE?

01:28PM 10 A. YES.

01:28PM 11 Q. TINA LIN REPORTS SHE BROUGHT THE SAMPLE UPSTAIRS, BUT HODA

01:29PM 12 SAID THEY CAN'T RUN IT.

01:29PM 13 DO YOU SEE THAT?

01:29PM 14 A. YES.

01:29PM 15 Q. AND LET'S KEEP SCROLLING UP. AND THERE'S ANOTHER MESSAGE

01:29PM 16 FROM TINA LIN JUST ON THAT SAME PAGE, STILL ON 2, WHERE MS. LIN

01:29PM 17 SAYS, "WE'RE MINUTES AWAY FROM FINDING OUT WHETHER HCG ON

01:29PM 18 EITHER OF THE EDISON DEVICES HAVE PASSED."

01:29PM 19 DO YOU SEE THAT?

01:29PM 20 A. YES.

01:29PM 21 Q. AND WHAT IS THAT REFERRING TO?

01:29PM 22 A. IT'S REFERRING TO RUNNING QC ON EITHER OF THE EDISON

01:29PM 23 DEVICES, WHICH I TAKE TO MEAN THAT THERE WERE ONLY TWO THAT

01:29PM 24 WERE BEING USED FOR HCG, AND THAT THEY WERE CLOSE TO

01:29PM 25 DETERMINING WHETHER THE QC PASSED.

01:29PM 1 Q. SO, IN OTHER WORDS, WHETHER THOSE EDISON DEVICES WOULD BE
01:29PM 2 AVAILABLE TO EVEN RUN THIS SAMPLE; CORRECT?

01:29PM 3 A. YES.

01:29PM 4 Q. LET'S LOOK AT PAGE 1, SO AGAIN MOVING FORWARD IN TIME.
01:29PM 5 ZOOM IN ON THE BOTTOM.

01:30PM 6 AND DO YOU SEE THAT MS. LIN FOLLOWS UP AND REPORTS, "LEVEL
01:30PM 7 2 FOR HCG JUST BARELY FAILED ON BOTH READERS, SORRY."

01:30PM 8 DO YOU SEE THAT?

01:30PM 9 A. YES.

01:30PM 10 Q. AND DOES IT MEAN THAT THOSE READERS, ACCORDING TO QUALITY
01:30PM 11 CONTROL, COULDN'T BE COUNTED ON TO RUN THE HCG SAMPLE THAT DAY?

01:30PM 12 A. CORRECT.

01:30PM 13 Q. AND LET'S SCROLL UP FROM THERE.

01:30PM 14 AND DO YOU SEE A MESSAGE FROM CHRISTIAN HOLMES TO HIS
01:30PM 15 SISTER, ELIZABETH HOLMES?

01:30PM 16 A. YES, AND TO SUNNY.

01:30PM 17 Q. AND LET'S LOOK AT THE FIRST ONE, JUST TO MS. HOLMES FIRST,
01:30PM 18 WHERE CHRISTIAN SAYS, "JUST FYI -- HCG RIGHT NOW CAUSING SOME
01:30PM 19 SERIOUS ISSUES AND PATIENT COMPLAINT."

01:30PM 20 DO YOU SEE THAT?

01:30PM 21 A. YES.

01:30PM 22 Q. AND ABOVE THAT HE WRITES, "WE ALSO HAVE A CAPACITY ISSUE
01:30PM 23 RIGHT NOW."

01:30PM 24 DO YOU SEE THAT REPORT?

01:30PM 25 A. YES.

01:31PM 1 Q. ABOVE THAT DO YOU SEE THAT MS. HOLMES RESPONDS TO
01:31PM 2 CHRISTIAN HOLMES AND INCLUDES MR. BALWANI?
01:31PM 3 A. YES.
01:31PM 4 Q. OKAY. SHE SAYS, "WE'LL CONNECT IN DETAIL ON THIS AS SOON
01:31PM 5 AS I'M OUT."
01:31PM 6 SHE SAYS, "SUNNY, THIS IS ALREADY HANDLED -- JUST FYI."
01:31PM 7 DO YOU SEE THAT?
01:31PM 8 A. YES.
01:31PM 9 Q. AND LET'S LOOK AT THE FINAL EMAIL IN THIS CHAIN ON THE TOP
01:31PM 10 OF PAGE 1, AND DO YOU SEE CHRISTIAN HOLMES WRITES TO MS. HOLMES
01:31PM 11 AND MR. BALWANI, AND IN THE SECOND PARAGRAPH, HE SAYS, "AS FOR
01:31PM 12 CURRENT STATUS OF HCG, WE ARE WORKING IN PARALLEL TO RUN SAMPLE
01:31PM 13 ON EDISON AS WELL AS IMMULITE. BUT FOUND OUT THIS MORNING THAT
01:31PM 14 REAGENTS FOR IMMULITE ARE ON ORDER AND BACK ORDERED."
01:31PM 15 DO YOU SEE THAT?
01:31PM 16 A. YES.
01:31PM 17 Q. AND CAN YOU DESCRIBE WHAT THE PROBLEM WAS HERE?
01:31PM 18 A. THE PROBLEM WAS THAT THERE WERE NOT ENOUGH REAGENTS TO RUN
01:32PM 19 THE HCG ON THE IMMULITE OF THE FDA APPROVED INSTRUMENT.
01:32PM 20 Q. AND WOULD THAT HAVE BEEN A PROBLEM IF THE EDISON DEVICES
01:32PM 21 COULD HAVE BEEN COUNTED ON THAT DAY TO RUN THE HCG SAMPLE?
01:32PM 22 A. SORRY. DID YOU SAY COULDN'T BE COUNTED ON?
01:32PM 23 Q. WOULD THAT HAVE STILL BEEN A PROBLEM IF THE EDISONS COULD
01:32PM 24 HAVE BEEN USED TO RUN THE HCG?
01:32PM 25 A. OH, IT WOULDN'T HAVE BEEN A PROBLEM IF YOU COULD HAVE USED

01:32PM 1 THE EDISONS, YES.

01:32PM 2 Q. OKAY. IF WE CAN PUT THAT ASIDE AND PLEASE TURN TO 4222.

01:32PM 3 BY THE WAY, WE JUST LOOKED AT AN EXHIBIT FROM JUNE 13TH

01:32PM 4 ABOUT -- LESS THAN TWO WEEKS AFTER YOU HAD DECIDED TO TAKE HCG

01:32PM 5 TESTING OFF THE EDISON; CORRECT?

01:32PM 6 A. YES.

01:32PM 7 Q. AS FAR AS YOU RECALL, DID YOU EVER GO BACK ON THAT

01:32PM 8 DECISION AND AUTHORIZE THERANOS TO USE THE EDISON TO TEST HCG?

01:33PM 9 A. I DID NOT.

01:33PM 10 Q. DO YOU HAVE 4222 IN FRONT OF YOU?

01:33PM 11 A. YES.

01:33PM 12 Q. AND AT 4222, DO YOU SEE AN EMAIL CHAIN, AGAIN INTERNAL AT

01:33PM 13 THERANOS, INCLUDING MR. BALWANI AND MS. HOLMES RELATING TO AN

01:33PM 14 HCG ISSUE?

01:33PM 15 A. YES.

01:33PM 16 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4222.

01:33PM 17 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:33PM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:33PM 19 (GOVERNMENT'S EXHIBIT 4222 WAS RECEIVED IN EVIDENCE.)

01:33PM 20 BY MR. BOSTIC:

01:33PM 21 Q. LET'S START AT THE VERY BOTTOM OF PAGE 1, AND DO YOU SEE,

01:33PM 22 DR. ROSENDORFF, THAT WE'RE ABOUT TO LOOK AT AN EMAIL FROM

01:34PM 23 ALLISON MARTIN TO SOMEONE NAMED ERIC NELSON, AND THE SUBJECT IS

01:34PM 24 RE LABS?

01:34PM 25 A. YES.

01:34PM 1 Q. AND LET'S LOOK AT THE CONTENT OF THAT ON THE NEXT PAGE.

01:34PM 2 AND DO YOU SEE THAT ALLISON MARTIN IS WORKING AT AN M.D.
01:34PM 3 OFFICE?

01:34PM 4 A. YES.

01:34PM 5 Q. AND SHE EMAILS, AND IN THE SECOND PARAGRAPH SHE SAYS, "WE
01:34PM 6 SENT A PATIENT OF OURS IN FOR HER 48-HOUR REPEAT ON HER QBHCG."
01:34PM 7 DO YOU SEE THAT?

01:34PM 8 A. YES.

01:34PM 9 Q. SHE SAYS, "HER INITIAL TEST CAME BACK AT 160 (RUN AT A
01:34PM 10 DIFFERENT LAB) AND WHEN WE SENT HER BACK IN FOR HER REPEAT WITH
01:34PM 11 YOUR LAB, THE RESULTS CAME BACK AT LESS THAN 7.82."

01:34PM 12 DO YOU SEE THAT?

01:34PM 13 A. YES.

01:34PM 14 Q. AND THE PERSON FROM THE DOCTOR'S OFFICE WRITES, "BECAUSE
01:34PM 15 HER TEST CAME BACK NEGATIVE, WE HAD HER DISCONTINUE HER CURRENT
01:34PM 16 MEDICATIONS AND BEGAN GETTING HER READY FOR HER NEXT CYCLE."

01:34PM 17 DO YOU SEE THAT?

01:35PM 18 A. YES.

01:35PM 19 Q. AND THE EMAIL CONTINUES. "A FEW WEEKS LATER SHE WENT BACK
01:35PM 20 IN FOR ANOTHER QBHCG AND IT CAME BACK AT OVER 2,000. WE
01:35PM 21 BROUGHT HER IN AND I SCANNED HER AND THERE WAS IN FACT A BABY
01:35PM 22 AND A HEARTBEAT.

01:35PM 23 "OUR CONCERN IS THAT YOUR LAB TOLD US SHE HAD A NEGATIVE
01:35PM 24 PREGNANCY, WE RELAYED THAT TO OUR PATIENT AND CONTINUED OUR
01:35PM 25 PROTOCOL AS SHE WASN'T PREGNANT."

01:35PM 1 DO YOU SEE THAT INFORMATION?

01:35PM 2 A. YES.

01:35PM 3 Q. LET'S GO TO PAGE 1 IN THIS EMAIL. LET'S ZOOM IN ON THE
01:35PM 4 MIDDLE OF THE PAGE.

01:35PM 5 AND DO YOU SEE THERE'S AN EMAIL FROM KIMBERLY ALPHONSO
01:35PM 6 FORWARDING THIS INFORMATION TO CHRISTIAN HOLMES AND
01:35PM 7 SUNNY BALWANI?

01:36PM 8 A. YES.

01:36PM 9 Q. AND MR. BALWANI IN TURN SENDS IT TO ELIZABETH HOLMES
01:36PM 10 INDIVIDUALLY WITH THE NOTE "PLEASE SEE BELOW."

01:36PM 11 DO YOU SEE THAT?

01:36PM 12 A. YES.

01:36PM 13 Q. AND AT THE TOP OF THIS PAGE, MS. HOLMES ASKS MR. BALWANI,
01:36PM 14 "HOW DID THAT HAPPEN?"

01:36PM 15 AND HE RESPONDS "FINDING OUT."

01:36PM 16 DO YOU SEE THAT?

01:36PM 17 A. YES.

01:36PM 18 Q. AND IS THIS ANOTHER EXAMPLE OF PROBLEMS WITH THE THERANOS
01:36PM 19 HCG ASSAY CONTINUING INTO SEPTEMBER 2014?

01:36PM 20 A. YES.

01:36PM 21 Q. DURING YOUR TIME AT THE COMPANY, WERE THE ISSUES WITH THE
01:36PM 22 THERANOS HCG ASSAY EVER RESOLVED TO YOUR SATISFACTION?

01:36PM 23 A. NO.

01:36PM 24 Q. LET'S TALK ABOUT A DIFFERENT TEST. AND IF I COULD ASK YOU
01:37PM 25 TO TURN TO EXHIBIT 1555, PLEASE, IN YOUR BINDER.

01:37PM 1 A. I HAVE IT.

01:37PM 2 Q. AND AT 1555, DO YOU SEE AN EMAIL CHAIN, INCLUDING YOURSELF

01:37PM 3 AND MR. BALWANI AND OTHERS AT THERANOS, CONCERNING HDL VALUES

01:37PM 4 AT THERANOS?

01:37PM 5 A. YES.

01:37PM 6 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1555.

01:37PM 7 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:37PM 8 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:37PM 9 (GOVERNMENT'S EXHIBIT 1555 WAS RECEIVED IN EVIDENCE.)

01:37PM 10 BY MR. BOSTIC:

01:37PM 11 Q. AND LET'S LOOK AT PAGE 4.

01:37PM 12 ON THE FIRST EMAIL IN THIS CHAIN, DO YOU SEE YOU WRITE TO

01:37PM 13 MR. BALWANI AND DANIEL YOUNG, CC'ING ELIZABETH HOLMES, ON

01:37PM 14 FEBRUARY 20TH, 2014?

01:37PM 15 A. YES.

01:37PM 16 Q. AND IN YOUR MESSAGE WITH THE SUBJECT LINE HDL VALUES --

01:38PM 17 FIRST OF ALL, WHAT WAS THE HDL TEST AT THERANOS?

01:38PM 18 A. SO HDL IS HIGH DENSITY LIPO PROTEIN. IT'S A FORM OF GOOD

01:38PM 19 CHOLESTEROL.

01:38PM 20 Q. AND WHAT DEVICE DID THERANOS USE TO TEST HDL?

01:38PM 21 A. THE SIEMENS ADVIA MODIFIED.

01:38PM 22 Q. OKAY. SO A THIRD PARTY DEVICE MODIFIED TO RUN IN A

01:38PM 23 THERANOS SPECIFIC WAY?

01:38PM 24 A. YES.

01:38PM 25 Q. LOOKING AT PAGE 4 OF YOUR EMAIL, YOU SAY "I WOULD LIKE TO

01:38PM 1 DISCONTINUE P-HDL TESTING, AND REVERT TO LIHEP VACUTAINER

01:38PM 2 SAMPLES FOR HDL, UNTIL WE HAVE FOUND OUT WHAT THE ROOT CAUSE IS

01:38PM 3 FOR THE LOW HDL VALUES, AND CORRECTED THE PROBLEM."

01:38PM 4 DO YOU SEE THAT?

01:38PM 5 A. YES.

01:38PM 6 Q. YOU SAY, "I DO NOT FEEL THAT REPORTING THIS HDL IN LIGHT

01:39PM 7 OF THE SPATE OF LOW HDL'S THAT WE HAVE BEEN HAVING IS GOOD

01:39PM 8 MEDICAL PRACTICE."

01:39PM 9 CAN YOU EXPLAIN WHAT YOU WERE SEEING AROUND THIS TIME AND

01:39PM 10 WHY YOU THOUGHT IT WAS NECESSARY TO CEASE THERANOS SPECIFIC

01:39PM 11 TESTING FOR THIS ASSAY?

01:39PM 12 A. I WAS SEEING, WITH REFERENCE TO THE PREVIOUS EMAIL, THAT

01:39PM 13 THE MEAN HDL HAD DROPPED SIGNIFICANTLY.

01:39PM 14 I WAS ALSO SEEING HDL'S COME OUT OF THE ANALYZERS WITH THE

01:39PM 15 PRETTY LOW VALUES, AND I DIDN'T FEEL THAT IT WAS A GOOD IDEA TO

01:39PM 16 CONTINUE USING THE THERANOS TEST FOR HDL.

01:39PM 17 Q. LET'S GO FORWARD IN THIS EMAIL CHAIN AND SEE THE

01:39PM 18 RESPONSES.

01:39PM 19 FIRST, LET'S LOOK AT PAGE 2 AT THE TOP.

01:39PM 20 A. YES, I HAVE IT.

01:39PM 21 Q. AND DO YOU SEE THERE'S A MESSAGE FROM SUNNY BALWANI TO

01:40PM 22 YOU, DANIEL YOUNG, AND ELIZABETH HOLMES ON THIS TOPIC?

01:40PM 23 A. YES.

01:40PM 24 Q. AND HE SAYS, "WE MUST RESOLVE THIS ASAP.

01:40PM 25 "DANIEL, PUT EVERYONE NEEDED ON THIS PROJECT, INCLUDING

01:40PM 1 SAM AND EREZ, NISHIT AND TINA."

01:40PM 2 AND HE SAYS, "WE CAN'T NOT REVERT BACK TO VENIPUNCTURE FOR
01:40PM 3 HDL."

01:40PM 4 DO YOU SEE THAT?

01:40PM 5 A. I THINK WHAT HE MEANS IS THAT WE CAN'T -- WELL, I DON'T
01:40PM 6 WANT TO PUT WORDS IN HIS MOUTH, BUT PERHAPS HE MEANS WE CAN'T
01:40PM 7 REVERT BACK TO VENIPUNCTURE FOR HDL.

01:40PM 8 Q. SO THERE'S EITHER A DOUBLE NEGATIVE OR A TYPO HAPPENING
01:40PM 9 HERE?

01:40PM 10 A. YES.

01:40PM 11 Q. AND LET ME ASK YOU, BASED ON YOUR CONVERSATIONS WITH
01:40PM 12 MR. BALWANI AROUND THIS TIME, WAS HE SUPPORTIVE OF THE IDEA OF
01:40PM 13 DISCONTINUING THERANOS TESTING AND USING COMMERCIALLY AVAILABLE
01:40PM 14 MACHINES INSTEAD?

01:40PM 15 A. NO, HE WAS NOT.

01:40PM 16 Q. OKAY. WE CAN PUT THAT ASIDE.

01:41PM 17 AND LET'S GO TO 4116.

01:41PM 18 A. OKAY.

01:41PM 19 Q. AND AT 4116, DO YOU SEE AN EMAIL CHAIN INCLUDING A
01:41PM 20 DISCUSSION BETWEEN YOU, MR. BALWANI, AND OTHERS ABOUT A
01:41PM 21 BICARBONATE TEST?

01:41PM 22 A. YES.

01:41PM 23 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4116.

01:41PM 24 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:41PM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:41PM 1 (GOVERNMENT'S EXHIBIT 4116 WAS RECEIVED IN EVIDENCE.)

01:41PM 2 BY MR. BOSTIC:

01:41PM 3 Q. AND, DR. ROSENDORFF, WAS BICARBONATE, OR CO₂, YET ANOTHER

01:41PM 4 TEST OFFERED BY THERANOS DURING THIS TIME PERIOD?

01:41PM 5 A. YES.

01:41PM 6 Q. WHAT WAS BICARBONATE? WHAT WAS ITS CLINICAL SIGNIFICANCE?

01:41PM 7 A. BICARBONATE GOES UP IN PATIENTS WITH OBSTRUCTIVE LUNG

01:42PM 8 DISEASE. IT BASICALLY TRAPS CO₂ AND IT CHANGES THE ACID BASE

01:42PM 9 IN THE BLOOD.

01:42PM 10 Q. OKAY. AND LOOKING AT THIS EMAIL, AND ZOOMING IN ON YOUR

01:42PM 11 MESSAGE TO MR. BALWANI AND MARK PANDORI, THIS IS MARCH 31ST,

01:42PM 12 2014; CORRECT?

01:42PM 13 A. YES.

01:42PM 14 Q. AND YOU WRITE, "HI SUNNY,

01:42PM 15 "AT LEAST 2/3 OF OUR PATIENTS ARE READING BELOW THE NORMAL

01:42PM 16 RANGE FOR BICARBONATE."

01:42PM 17 YOU THEN SAY, "I DO NOT EXPECT OUTPATIENTS TO HAVE

01:42PM 18 ABNORMAL BICARB VALUES."

01:42PM 19 DO YOU SEE THAT?

01:42PM 20 A. YES.

01:42PM 21 Q. AND YOU THEN REFERENCE A "STUDY WITH SIX DAYS OF DATA THAT

01:42PM 22 ALSO SHOWS THAT BICARB IS READING ABOUT 30 PERCENT LOWER THAN

01:42PM 23 MATCHED VENOUS, EVEN AFTER THE CORRECTION OF THE VALUE FOR

01:42PM 24 BIAS."

01:42PM 25 A. YES.

01:42PM 1 Q. CAN YOU PUT THAT IN PLAIN LANGUAGE FOR US? WHAT PROBLEM
01:42PM 2 WERE YOU SEEING WITH BICARBONATE TESTING AT THIS TIME?

01:43PM 3 A. SO THE BICARB RESULTS WE WERE GETTING IN THE LAB WERE
01:43PM 4 GENERALLY VERY LOW.

01:43PM 5 AS I SAY IN THIS EMAIL, TWO-THIRDS OF THE PATIENTS WERE
01:43PM 6 READING BELOW THE NORMAL RANGE FOR BICARB, WHICH I WOULDN'T
01:43PM 7 EXPECT AT ALL WITH HEALTHY PATIENTS WALKING INTO WALGREENS.

01:43PM 8 Q. AND DID THAT CAUSE YOU TO HAVE CONCERNS ABOUT THE
01:43PM 9 DEPENDABILITY OR THE ACCURACY OF THE TEST?

01:43PM 10 A. YES, AND THE ABILITY OF THE CONTAINER TO HOLD THE BICARB,
01:43PM 11 HOLD THE CO2, BECAUSE MY EXPLANATION WAS THAT THE CO2 WAS
01:43PM 12 ESCAPING RAPIDLY FROM THE CONTAINERS.

01:43PM 13 Q. AND WHEN YOU SAY THE CONTAINERS, WHAT CONTAINERS ARE WE
01:43PM 14 TALKING ABOUT?

01:43PM 15 A. THE CAPILLARY TUBE AND NANOTAINER, THE CTN CONTAINER.

01:43PM 16 Q. AND THAT WAS A THERANOS-SPECIFIC DEVICE?

01:44PM 17 A. YES.

01:44PM 18 Q. IN SEEING THESE RESULTS AND THEORIZING ABOUT THE LOSS OF
01:44PM 19 BICARBONATE FROM THE SAMPLES, WERE YOU LOOKING AT AN ISSUE THAT
01:44PM 20 YOU DIDN'T SEE COME UP IN CONVENTIONAL TESTING FOR BICARBONATE?

01:44PM 21 A. YES.

01:44PM 22 Q. AND THIS WAS SOMETHING THAT WAS UNIQUE TO THERANOS?

01:44PM 23 A. YES.

01:44PM 24 Q. LET'S LOOK AT TAB 4189 NEXT. IT'S 4189.

01:44PM 25 A. I HAVE IT.

01:44PM 1 Q. OKAY. AND AT 4189, DO YOU SEE ANOTHER EMAIL INCLUDING YOU
01:44PM 2 AND MR. BALWANI RELATING TO BICARBONATE RESULTS?

01:45PM 3 A. YES.

01:45PM 4 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4189.

01:45PM 5 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:45PM 6 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:45PM 7 (GOVERNMENT'S EXHIBIT 4189 WAS RECEIVED IN EVIDENCE.)

01:45PM 8 BY MR. BOSTIC:

01:45PM 9 Q. AND LET'S START WITH THE EMAIL AT THE BOTTOM HERE FROM
01:45PM 10 MAX FOSQUE.

01:45PM 11 A. YES.

01:45PM 12 Q. AND IT READS, "PER ELIZABETH'S REQUEST, IN THE SHORT TERM,
01:45PM 13 PLEASE DO NOT PUT ANY COMMENT/NOTE ON THE RESULT REPORT IF C02
01:45PM 14 VALUES ARE VOIDED."

01:45PM 15 DO YOU SEE THAT?

01:45PM 16 A. YES.

01:45PM 17 Q. IT SAYS, "IF DOCTORS CALL TO INQUIRE, WE HAVE PROVIDED THE
01:45PM 18 FOLLOWING MESSAGING TO THE CUSTOMER SERVICE TEAM."

01:45PM 19 FIRST OF ALL, WHAT WOULD IT MEAN IF C02 VALUES WERE VOIDED
01:45PM 20 AT THERANOS, AND WAS THAT SOMETHING THAT YOU WERE SEEING AROUND
01:45PM 21 THIS TIME?

01:45PM 22 A. YES. I INSTRUCTED ALL OF THE C02 VALUES AT THIS TIME TO
01:46PM 23 BE VOIDED.

01:46PM 24 WHAT WOULD IT MEAN? IT WOULD MEAN THAT THE TESTS THAT THE
01:46PM 25 DOCTORS WERE ORDERING THAT THEY THOUGHT THEY WOULD GET, THEY

01:46PM 1 WEREN'T GETTING CONSISTENTLY, AND THE PATIENTS.

01:46PM 2 Q. THE MESSAGING PROVIDED TO THE CUSTOMER SERVICE TEAM THAT

01:46PM 3 WOULD BE GIVEN TO DOCTORS READS, "C02 RESULTS WERE NOT REPORTED

01:46PM 4 DUE TO TEMPORARY UNAVAILABILITY OF THIS TEST FOR THIS SAMPLE."

01:46PM 5 DO YOU SEE THAT?

01:46PM 6 A. YES.

01:46PM 7 Q. AND LET'S LOOK UP YOUR RESPONSE TO THIS. AND WE SEE AN

01:46PM 8 EMAIL FROM YOU TO MR. BALWANI INDIVIDUALLY; CORRECT?

01:46PM 9 A. YES.

01:46PM 10 Q. THIS IS LATE AUGUST, 2014.

01:46PM 11 AND YOU WRITE, "SUNNY,

01:46PM 12 "I AM THINKING THAT SINCE WE VOID ALL ABNORMAL BICARBONATE

01:46PM 13 RESULTS, THE TEST HAS LOST ANY DIAGNOSTIC VALUE, AND PROBABLY

01:46PM 14 ALSO RELIABILITY WHEN RESULTS ARE REPORTED IN THE NORMAL

01:46PM 15 RANGE."

01:46PM 16 DO YOU SEE THAT?

01:46PM 17 A. YES.

01:46PM 18 Q. AND CAN YOU EXPLAIN WHAT YOU WERE REFERENCING HERE? WHAT

01:47PM 19 DOES THAT MEAN?

01:47PM 20 A. WHAT I'M REFERENCING HERE IS A PATIENT WHO HAS A HIGH

01:47PM 21 BICARBONATE VALUE AND THEN THE C02 ESCAPES FROM THE CTN. BY

01:47PM 22 THE TIME WE TEST IT IN THE LAB, THE RESULTS ARE NORMAL,

01:47PM 23 QUOTE-UNQUOTE. BUT THAT DOESN'T REALLY REFLECT WHAT IS GOING

01:47PM 24 ON IN THE PATIENT.

01:47PM 25 Q. AND THAT EMAIL FROM YOU TO MR. BALWANI REFERENCES THE

01:47PM 1 VOIDING OF "ALL ABNORMAL BICARBONATE RESULTS."

01:47PM 2 DO YOU SEE THAT?

01:47PM 3 A. YES.

01:47PM 4 Q. AND CAN YOU EXPLAIN WHAT THAT MEANS?

01:47PM 5 A. ANY BICARBONATE VALUE THAT WAS ABOVE OR BELOW THE

01:47PM 6 REFERENCE RANGE LIMITS WOULD BE VOIDED.

01:47PM 7 Q. AND DOES THAT MEAN IT WOULD NOT BE REPORTED TO THE

01:47PM 8 PATIENT?

01:47PM 9 A. CORRECT.

01:47PM 10 Q. SO IN THAT CASE, ARE WE TALKING ABOUT A SAMPLE THAT WAS

01:47PM 11 ACTUALLY RUN, BUT BECAUSE OF THE RESULT, IT IS NOT REPORTED TO

01:47PM 12 THE PATIENT?

01:47PM 13 A. CORRECT.

01:47PM 14 Q. SO LOOKING BACK AT THE MESSAGE THAT WAS TO BE GIVEN TO

01:48PM 15 DOCTORS IN THAT SITUATION, LET'S GO BACK TO THAT TOWARDS THE

01:48PM 16 BOTTOM OF THE PAGE, DO YOU SEE WHERE IT SAYS, "C02 RESULTS WERE

01:48PM 17 NOT REPORTED DUE TO TEMPORARY UNAVAILABILITY OF THIS TEST"?

01:48PM 18 A. YES.

01:48PM 19 Q. IS THAT AN ACCURATE DESCRIPTION OF WHAT WAS HAPPENING

01:48PM 20 HERE? WAS TEST ACTUALLY UNAVAILABLE?

01:48PM 21 A. UNAVAILABLE.

01:48PM 22 Q. AND WAS THE TEST UNAVAILABLE, OR WERE THE SAMPLES ACTUALLY

01:48PM 23 BEING TESTED?

01:48PM 24 A. THE SAMPLES WERE BEING TESTED, AND THE RESULTS THAT WERE

01:48PM 25 OUT OF RANGE WERE BEING VOIDED.

01:48PM 1 Q. OKAY.

01:48PM 2 A. BUT MY RECOLLECTION IS THAT AT ONE POINT WE JUST STOPPED

01:48PM 3 REPORTING C02 COMPLETELY.

01:48PM 4 Q. I SEE. OKAY. THANK YOU.

01:48PM 5 LOOKING AT THE TOP OF THIS EMAIL, DO YOU SEE THAT

01:48PM 6 MR. BALWANI FORWARDS THIS EMAIL CHAIN TO MS. HOLMES?

01:48PM 7 A. YES.

01:48PM 8 Q. DID MR. BALWANI EVER CHANGE THAT POLICY ABOUT HOW TO

01:48PM 9 MESSAGE TO DOCTORS, OR DO YOU REMEMBER ANY CONVERSATIONS WITH

01:49PM 10 HIM AFTERWARDS?

01:49PM 11 A. NO.

01:49PM 12 Q. OKAY. IF YOU COULD PUT THAT ASIDE.

01:49PM 13 I'D LIKE TO TALK TO YOU ABOUT ONE MORE ASSAY, OR ONE MORE

01:49PM 14 CATEGORY OF ASSAYS, AND THAT'S THE ISE ASSAY.

01:49PM 15 ARE YOU FAMILIAR WITH THAT ABBREVIATION?

01:49PM 16 A. YES.

01:49PM 17 Q. AND WHAT DOES ISE STAND FOR?

01:49PM 18 A. ION SELECTIVE ELECTRODE.

01:49PM 19 Q. AND WHAT KINDS OF ASSAYS ARE INCLUDED IN THAT CATEGORY?

01:49PM 20 A. SODIUM, POTASSIUM, CHLORIDE.

01:49PM 21 Q. AND DID THERANOS OFFER THOSE ASSAYS TO PATIENTS DURING

01:49PM 22 YOUR TIME AS LAB DIRECTOR?

01:49PM 23 A. YES.

01:49PM 24 Q. AND WHAT DEVICE, OR WHAT KIND OF DEVICE, DID THE COMPANY

01:49PM 25 USE TO DO ISE ASSAYS?

01:49PM 1 A. MODIFIED SIEMENS.

01:49PM 2 Q. SO, AGAIN, WE'RE TALKING ABOUT NON-THERANOS THIRD PARTY

01:49PM 3 DEVICES RUNNING IN A THERANOS UNIQUE WAY?

01:49PM 4 A. YES.

01:49PM 5 Q. CAN I ASK YOU TO TURN TO TAB 1214 IN YOUR BINDER.

01:50PM 6 A. 1214?

01:50PM 7 Q. 1214.

01:50PM 8 A. OKAY. GOT IT.

01:50PM 9 Q. AND AT THE OUTSET, LET ME ASK, DURING YOUR TIME AT

01:50PM 10 THERANOS, DID THE COMPANY HAVE REPEATED PROBLEMS WITH ITS ISE

01:50PM 11 TEST?

01:50PM 12 A. YES.

01:50PM 13 Q. AND AT 1214, DO WE SEE AN EMAIL CHAIN INCLUDING

01:50PM 14 MR. BALWANI, AND YOU FURTHER DOWN THE CHAIN, RELATING TO SOME

01:50PM 15 OF THOSE ISSUES?

01:50PM 16 A. I'M NOT SEEING A 1214. I'M SORRY.

01:50PM 17 Q. OH. DO YOU NOT HAVE 1214 IN YOUR BINDER?

01:51PM 18 A. OH, IT'S EXHIBIT 1214?

01:51PM 19 Q. YES.

01:51PM 20 A. I'M SORRY. AND YOU'RE ASKING ME ABOUT?

01:51PM 21 Q. FOR NOW, WHETHER THIS IS AN EMAIL CHAIN INCLUDING YOU AND

01:51PM 22 MR. BALWANI ADDRESSING GENERAL CHEMISTRY TESTS AND ISE

01:51PM 23 PROBLEMS?

01:51PM 24 A. YES.

01:51PM 25 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1214.

01:51PM 1 MR. COOPERSMITH: NO OBJECTION.

01:51PM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:51PM 3 (GOVERNMENT'S EXHIBIT 1214 WAS RECEIVED IN EVIDENCE.)

01:51PM 4 BY MR. BOSTIC:

01:51PM 5 Q. AND LET'S START AT THE BOTTOM OF PAGE 2 AND LET'S LOOK AT

01:51PM 6 THE HEADER THERE.

01:51PM 7 DO YOU SEE WE'RE ABOUT TO LOOK AT AN EMAIL FROM

01:51PM 8 MR. BALWANI TO YOU AND OTHERS AT THE COMPANY?

01:51PM 9 A. YES.

01:51PM 10 Q. OKAY. LET'S LOOK AT THE TEXT OF THAT EMAIL ON THE

01:51PM 11 FOLLOWING PAGE.

01:51PM 12 IF WE ZOOM IN AT THE TOP, MR. BALWANI WRITES, "I WOULD

01:51PM 13 LIKE THE 2 ADVIA'S ON NORMANDY TO BE 100 PERCENT DEDICATED TO

01:51PM 14 CLIA MICRO SAMPLES STARTING THIS WEEK (OR NEXT WEEKEND AT THE

01:51PM 15 LATEST) ."

01:51PM 16 DO YOU SEE THAT?

01:51PM 17 A. YES.

01:51PM 18 Q. AND HE SAYS, "I WOULD LIKE 1 ADVIA SET UP TO PROCESS ONLY

01:52PM 19 OUR FINGERSTICK/MICRO SAMPLES FOR GC AND THE OTHER SET UP FOR

01:52PM 20 OUR IMMUNOASSAYS."

01:52PM 21 DO YOU SEE THAT?

01:52PM 22 A. YES.

01:52PM 23 Q. AND WHAT DID GC STAND FOR?

01:52PM 24 A. GENERAL CHEMISTRIES.

01:52PM 25 Q. AND DID THAT INCLUDE THE ISE ASSAYS THAT WE ARE TALKING

01:52PM 1 ABOUT NOW?

01:52PM 2 A. YES.

01:52PM 3 Q. AND LET'S GO TO PAGE 1 AND LOOK AT THE BOTTOM, AND DO YOU
01:52PM 4 SEE THAT WE'RE LOOKING AT A RESPONSE FROM ROSE EDMONDS TO
01:52PM 5 MR. BALWANI?

01:52PM 6 A. YES.

01:52PM 7 Q. AND SHE SAYS SHE'S SOMEWHAT CONCERNED WITH THE FEASIBILITY
01:52PM 8 OF MAKING THIS CHANGE SO QUICKLY.

01:52PM 9 DO YOU SEE THAT?

01:52PM 10 A. YES.

01:52PM 11 Q. IT SAYS, "TODAY WE WERE GOING TO START AN EXPERIMENT TO
01:52PM 12 TRY TO TROUBLESHOOT THE ISE VARIABILITY."

01:52PM 13 DO YOU REMEMBER ISE VARIABILITY BEING A PROBLEM AT
01:52PM 14 THERANOS AT THIS TIME?

01:52PM 15 A. YES, ABSOLUTELY.

01:52PM 16 Q. CAN YOU DESCRIBE WHAT THAT MEANS?

01:52PM 17 A. FREQUENTLY THE POTASSIUM VALUES WERE EXTREMELY HIGH. BUT
01:53PM 18 IT WASN'T JUST POTASSIUM. WE HAD PROBLEMS WITH SODIUM, TOO,
01:53PM 19 AND CHLORIDE.

01:53PM 20 Q. WAS THAT AN ONGOING PROBLEM WITH TESTING AT THERANOS?

01:53PM 21 A. YES.

01:53PM 22 Q. LET'S LOOK AT MR. BALWANI'S RESPONSE TO THIS.

01:53PM 23 AND AGAIN, LET'S ORIENT OURSELVES IN TIME. THIS IS
01:53PM 24 NOVEMBER 4TH, 2013; CORRECT?

01:53PM 25 A. YES.

01:53PM 1 Q. LESS THAN TWO MONTHS AFTER THE COMPANY BEGAN PATIENT
01:53PM 2 TESTING?

01:53PM 3 A. YES.

01:53PM 4 Q. IT SAYS, "THE ADVIA/GC SCENARIO CONTINUES TO BE A MESS."
01:53PM 5 DO YOU SEE THAT?

01:53PM 6 A. YES.

01:53PM 7 Q. OKAY. WE CAN PUT THAT ASIDE AND LET'S GO TO 4124 NEXT.
01:54PM 8 OKAY. DO YOU HAVE 4124?

01:54PM 9 A. YES.

01:54PM 10 Q. AND IS THAT ANOTHER EMAIL CHAIN, INCLUDING YOU AND
01:54PM 11 MR. BALWANI, RELATING TO SOME PROBLEMATIC RESULTS FOR
01:54PM 12 POTASSIUM?

01:54PM 13 A. YES.

01:54PM 14 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4124.
01:54PM 15 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:54PM 16 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
01:54PM 17 (GOVERNMENT'S EXHIBIT 4124 WAS RECEIVED IN EVIDENCE.)

01:54PM 18 BY MR. BOSTIC:

01:54PM 19 Q. FIRST, DR. ROSENDORFF, WHAT IS THE POTASSIUM TEST USED FOR
01:54PM 20 CLINICALLY?

01:54PM 21 A. IT'S USED TO MEASURE KIDNEY FUNCTION, AND IT'S ALSO
01:54PM 22 MONITORED BECAUSE IT CAUSES HEART RHYTHM PROBLEMS WHICH COULD
01:54PM 23 BE LETHAL IF THE POTASSIUM IS VERY HIGH.

01:54PM 24 Q. LET'S GO TO PAGE 2 AND LOOK AT THE BEGINNING OF THIS EMAIL
01:54PM 25 CHAIN, AND LET'S ZOOM IN ON THAT INITIAL EMAIL MESSAGE.

01:55PM 1 AND DO YOU SEE THAT THERE'S A MESSAGE THAT READS, "HERE IS
01:55PM 2 SOME FEEDBACK FROM KARI REEDY IN THE FIELD TODAY," FROM A
01:55PM 3 PARTICULAR DOCTOR'S OFFICE.

01:55PM 4 DO YOU SEE THAT?

01:55PM 5 A. YES.

01:55PM 6 Q. AND IT SAYS, "THIS DOCTOR LIKES OUR LAB AND HAS SENT 3
01:55PM 7 PATIENTS. HE DOES NOT TRUST OUR POTASSIUM TEST, HOWEVER."

01:55PM 8 A. YES.

01:55PM 9 Q. AND THEN IT GOES INTO DETAIL, "HE WAS CALLED LATE AT NIGHT
01:55PM 10 REGARDING A PATIENT THAT HAD ABNORMALLY HIGH LEVELS OF
01:55PM 11 POTASSIUM. THE PATIENT WAS IN NYC AT THE TIME OF THE CALL, SO
01:55PM 12 THE DOCTOR HAD TO CONTACT THEM WHILE THEY WERE OUT OF TOWN.
01:55PM 13 THEY DID A RETEST IN NEW YORK AND THE RESULTS CAME BACK
01:55PM 14 COMPLETELY NORMAL."

01:55PM 15 DO YOU SEE THAT?

01:55PM 16 A. YES.

01:55PM 17 Q. "DR. STAMP SAID THAT K PLUS" -- AND I ASKED, IS THAT
01:55PM 18 POTASSIUM?

01:55PM 19 A. YES, IT IS.

01:55PM 20 Q. "THAT POTASSIUM IS A TRICKY ONE TO COLLECT BECAUSE OF
01:55PM 21 CLOTTING AND SUCH."

01:56PM 22 AND HE SAID HE ALSO MENTIONED THAT HE WAS WILLING TO SHARE
01:56PM 23 MORE INFORMATION.

01:56PM 24 DO YOU SEE THAT?

01:56PM 25 A. YES.

01:56PM 1 Q. LET'S GO TO PAGE 1 IN THE SAME CHAIN. LET'S LOOK AT THE
01:56PM 2 EMAIL FROM DANIEL YOUNG IN THE MIDDLE.

01:56PM 3 HE SAYS, "I'M NOT SURE THAT THIS DOCTOR WAS ASKING ABOUT
01:56PM 4 THE CRITICAL VALUE FOR POTASSIUM."

01:56PM 5 DO YOU SEE THAT?

01:56PM 6 A. YES.

01:56PM 7 Q. AND ABOVE THAT MESSAGE, MR. BALWANI WRITES, "BUT DO WE
01:56PM 8 KNOW IF THIS RESULT WAS ACCURATE GIVEN THAT THIS IS AN ISE
01:56PM 9 ASSAYS. THAT'S WHAT I WAS REFERRING TO."

01:56PM 10 DO YOU SEE THAT?

01:56PM 11 A. YES, I DO.

01:56PM 12 Q. AND AROUND THIS TIME PERIOD, APRIL 2014, WAS MR. BALWANI
01:56PM 13 AWARE OF PROBLEMS THAT THERANOS HAD BEEN HAVING WITH ITS ISE
01:57PM 14 ASSAYS?

01:57PM 15 A. YES, HE WAS.

01:57PM 16 Q. AND HOW DO YOU KNOW THAT?

01:57PM 17 A. FROM THIS EMAIL, CONVERSATIONS, AND OTHER EMAILS.

01:57PM 18 Q. OKAY. ABOVE THAT MESSAGE FROM MR. BALWANI, WE SEE
01:57PM 19 DANIEL YOUNG WRITES BACK TO MR. BALWANI, AND YOU ARE NO LONGER
01:57PM 20 ON THE EMAIL CHAIN AT THIS POINT; IS THAT CORRECT?

01:57PM 21 A. CORRECT.

01:57PM 22 Q. AND DANIEL YOUNG SAYS, "SOME POTASSIUM RESULTS CAN RUN
01:57PM 23 HIGH WITH SLIGHT SAMPLE HEMOLYSIS."

01:57PM 24 DO YOU SEE THAT?

01:57PM 25 A. YES.

01:57PM 1 Q. AND WHAT IS HEMOLYSIS?

01:57PM 2 A. HEMOLYSIS IS THE BURSTING OF RED BLOOD CELLS. IT CAN

01:57PM 3 EITHER OCCUR IN THE BODY IN CERTAIN DISEASES, OR IT CAN HAPPEN

01:57PM 4 WHEN YOU COLLECT THE BLOOD.

01:58PM 5 Q. AND DANIEL YOUNG GOES ON TO SAY, "WE REVIEW THE IMAGES FOR

01:58PM 6 ALL SAMPLES WITH HIGH K RESULTS AND THEN CLIA DETERMINES IF A

01:58PM 7 RERUN IS NEEDED OR NOT."

01:58PM 8 DO YOU SEE THAT?

01:58PM 9 A. YES.

01:58PM 10 Q. CAN YOU EXPLAIN WHAT WAS HAPPENING HERE, THIS VISUAL

01:58PM 11 REVIEW AS YOU UNDERSTAND IT?

01:58PM 12 A. THIS INVOLVES LOOKING AT AN IMAGE OF THE CTN, AND AROUND

01:58PM 13 THAT TIME, SOMEWHAT OF A COTTAGE INDUSTRY HAD SPRUNG UP

01:58PM 14 REGARDING WHAT R&D THOUGHT WOULD RESULT IN HIGH POTASSIUM IF

01:58PM 15 THEY SAW A FIBRIN STRAND OR A CLOT, OR IF THE SAMPLE LOOKED

01:58PM 16 PINK TO THE EYE, THEY TRIED TO COME UP WITH A CATALOG OF IMAGES

01:58PM 17 THAT COULD ALERT THE OPERATOR TO A HEMOLYSIS PROBLEM OR A

01:58PM 18 CLOTTING PROBLEM, FOR INSTANCE.

01:59PM 19 Q. FROM YOUR TIME AS LAB DIRECTOR AT THERANOS, DID YOU HAVE

01:59PM 20 AN UNDERSTANDING AS TO WHETHER THIS HEMOLYSIS PROBLEM WAS MORE

01:59PM 21 OR LESS COMMON IN THE THERANOS FINGERSTICK SAMPLES VERSUS

01:59PM 22 STANDARD VEIN SAMPLES?

01:59PM 23 A. MUCH MORE COMMON.

01:59PM 24 Q. MUCH MORE COMMON IN WHICH?

01:59PM 25 A. IN THE THERANOS SAMPLES, THE FINGERSTICKS.

01:59PM 1 Q. FINALLY, IN THIS EMAIL CHAIN, LET'S LOOK AT THE TOP OF
01:59PM 2 PAGE 1. AND WE SEE HERE A MESSAGE FROM MR. BALWANI TO THE CEO,
01:59PM 3 MS. HOLMES, ON APRIL 17TH, 2014; CORRECT?
01:59PM 4 A. YES.
01:59PM 5 Q. AND REFERENCING THAT VISUAL INSPECTION, MR. BALWANI
01:59PM 6 WRITES, "SEE BELOW. THIS IS WHAT WE ARE DOING TODAY WITH OUR
01:59PM 7 LIMITED RESOURCES. THIS IS WHAT DANIEL HAS TO DO MANUALLY."
01:59PM 8 AND THEN HE WRITES, "NOT SCALEABLE."
01:59PM 9 DO YOU SEE THAT?
01:59PM 10 A. YES, I DO.
01:59PM 11 Q. THE STEP OF HAVING TO VISUALLY INSPECT A HIGH POTASSIUM
01:59PM 12 SAMPLE FOR HEMOLYSIS, WOULD THAT ADD TIME TO THE TESTING
02:00PM 13 PROCESS?
02:00PM 14 A. ABSOLUTELY.
02:00PM 15 Q. AND WAS THERANOS STRUGGLING AROUND THIS TIME WITH
02:00PM 16 LABORATORY BACKLOGS DUE TO FACTORS INCLUDING EQUIPMENT
02:00PM 17 RELIABILITY?
02:00PM 18 A. YES.
02:00PM 19 Q. OKAY. WE CAN SET THAT ONE ASIDE.
02:00PM 20 LET'S GO TO 4014.
02:00PM 21 A. I HAVE IT.
02:00PM 22 Q. OKAY. YOU BEAT ME THERE.
02:00PM 23 OKAY. AND AT 4014, DO YOU SEE ADDITIONAL COMMUNICATIONS,
02:00PM 24 INCLUDING MR. BALWANI, RELATING TO ISE PROBLEMS?
02:00PM 25 A. YES.

02:00PM 1 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4014.

02:01PM 2 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

02:01PM 3 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:01PM 4 (GOVERNMENT'S EXHIBIT 4014 WAS RECEIVED IN EVIDENCE.)

02:01PM 5 BY MR. BOSTIC:

02:01PM 6 Q. AND LET'S LOOK FIRST AT THE BOTTOM OF PAGE 1.

02:01PM 7 A. YES.

02:01PM 8 Q. AND DO YOU SEE THAT THIS IS DANIEL YOUNG WRITING WITH A

02:01PM 9 FEW UPDATES RELATED TO CLIA OPERATIONS?

02:01PM 10 A. YES.

02:01PM 11 Q. OKAY. AND HE'S WRITING TO MR. BALWANI AND MS. HOLMES;

02:01PM 12 CORRECT?

02:01PM 13 A. YES.

02:01PM 14 Q. LET'S LOOK AT PAGE 2.

02:01PM 15 AND ZOOM IN ON ITEM 3 IN THE LIST.

02:01PM 16 THIS IS OCTOBER 2013.

02:01PM 17 AND DR. YOUNG WRITES REGARDING ELECTROLYTES/ISE:

02:01PM 18 "OUR NA, K, CL TEST RESULTS ARE STILL NOT AS RELIABLE AS I

02:01PM 19 WOULD LIKE."

02:01PM 20 DO YOU SEE THAT?

02:01PM 21 A. YES, I DO.

02:01PM 22 Q. IS THAT SODIUM, POTASSIUM, AND CHLORIDE RESPECTIVELY?

02:02PM 23 A. YES, IT IS.

02:02PM 24 Q. DR. YOUNG THEN SAYS, "I'VE ASKED NICK HAASE TO RUN SOME

02:02PM 25 ADDITIONAL TESTS TO SEE IF WE CAN USE CALIBRATORS INSTEAD OF

02:02PM 1 CONTROLS."

02:02PM 2 DO YOU SEE THAT?

02:02PM 3 A. YES.

02:02PM 4 Q. AND LET'S GO TO PAGE 1. LET'S LOOK AT A FOLLOW-UP MESSAGE

02:02PM 5 FROM DANIEL YOUNG TO MR. BALWANI ON OCTOBER 21ST.

02:02PM 6 HE SAYS, "JUST A QUICK UPDATE, WE ARE STILL HAVING ISE

02:02PM 7 CHALLENGES."

02:02PM 8 DO YOU SEE THAT?

02:02PM 9 A. YES.

02:02PM 10 Q. AND HE SAYS, "THERE ARE SEVERAL RESULTS RECENTLY THAT ARE

02:02PM 11 OUT OF RANGE NORMAL THAT I DO NOT BELIEVE. SO AS A RESULT WE

02:02PM 12 ARE NOT REPORTING THESE RESULTS."

02:02PM 13 DO YOU SEE THAT?

02:02PM 14 A. YES.

02:02PM 15 Q. OKAY. AND LET'S LOOK AT THE VERY TOP OF PAGE 1. AND WE

02:02PM 16 SEE SOME MORE EXPLANATION FROM DANIEL YOUNG TO MR. BALWANI AND

02:02PM 17 MS. HOLMES SAYING, "THERE HAVE BEEN RESULTS FOR WHICH ALL ISE

02:03PM 18 RESULTS ARE OUT OF RANGE. FOR EXAMPLE, POTASSIUM IS HIGH, AND

02:03PM 19 CHLORIDE AND SODIUM ARE LOW RELATIVE TO THE REFERENCE RANGE."

02:03PM 20 DO YOU SEE THAT?

02:03PM 21 A. YES.

02:03PM 22 Q. AND HE THEN REFERENCES SOME MORE IN-HOUSE STUDIES TO TRY

02:03PM 23 AND RESOLVE THE PROBLEM.

02:03PM 24 DO YOU SEE THAT?

02:03PM 25 A. YES.

02:03PM 1 Q. AND LET'S GO NEXT TO 1717.

02:03PM 2 A. I HAVE IT.

02:03PM 3 Q. OKAY. SO WE'RE MOVING FORWARD IN TIME.

02:03PM 4 DO YOU SEE THAT THIS IS AN EMAIL CHAIN FROM MAY OF 2014,
02:03PM 5 INCLUDING MR. BALWANI, AND RELATING TO ISE PROBLEMS?

02:03PM 6 A. YES.

02:03PM 7 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1717.

02:03PM 8 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

02:03PM 9 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:03PM 10 (GOVERNMENT'S EXHIBIT 1717 WAS RECEIVED IN EVIDENCE.)

02:03PM 11 BY MR. BOSTIC:

02:03PM 12 Q. AND LET'S START ON PAGE 2 AT THE BOTTOM.

02:04PM 13 AND DO YOU SEE THAT MONTHS LATER YOU RECEIVE AN EMAIL
02:04PM 14 INDICATING "ALMOST EVERY ISE SAMPLE NEEDS A RE-RUN SINCE THEY
02:04PM 15 ARE HIGH."

02:04PM 16 DO YOU SEE THAT?

02:04PM 17 A. YES.

02:04PM 18 Q. YOU ARE ALSO TOLD THAT, "MOST OF THE TIME THE RE-RUN VALUE
02:04PM 19 IS ALSO HIGH OR THE SAME."

02:04PM 20 A. YES.

02:04PM 21 Q. "IS THERE A WAY WE CAN HAVE LIMIT ON RE-RUNS?"

02:04PM 22 DO YOU SEE THAT?

02:04PM 23 A. YES.

02:04PM 24 Q. AND LET'S SEE HOW YOU RESPONDED. GO UP ONE EMAIL.

02:04PM 25 AND YOU, IN RESPONSE, FORWARDED THIS INFORMATION TO

02:04PM 1 MR. BALWANI DIRECTLY; CORRECT?

02:04PM 2 A. YES, I DID.

02:04PM 3 Q. AND IN MAY OF 2014 YOU TELL HIM, "SUNNY,

02:04PM 4 "SORRY TO BOTHER YOU. I'D LIKE TO CORRECT OUR ISE

02:04PM 5 PROBLEM."

02:04PM 6 AND THEN YOU REFERENCE HIM -- YOU REFERENCE FOR HIM THE

02:04PM 7 MESSAGE BELOW; CORRECT?

02:04PM 8 A. YES.

02:04PM 9 Q. YOU SAY YOU BELIEVE "THAT SODIUM, POTASSIUM, AND CHLORIDE

02:04PM 10 SHOULD HAVE A DEDICATED CTN AND BE RUN NEAT ON THE ADVIA."

02:04PM 11 DO YOU SEE THAT?

02:05PM 12 A. YES.

02:05PM 13 Q. AND WAS THE ADVIA A THERANOS DEVICE?

02:05PM 14 A. NO. IT WAS A SIEMENS DEVICE.

02:05PM 15 Q. OKAY. WE CAN SET THAT ASIDE.

02:05PM 16 AND LET'S LOOK AT 4292.

02:05PM 17 A. I HAVE IT.

02:05PM 18 Q. AND AT 4292, THAT EXHIBIT, DO YOU SEE AN EMAIL FROM

02:05PM 19 OCTOBER 2014 INCLUDING MR. BALWANI AND REFERENCING ISE ISSUES?

02:05PM 20 A. YES.

02:05PM 21 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4292.

02:05PM 22 MR. COOPERSMITH: NO OBJECTION.

02:06PM 23 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:06PM 24 (GOVERNMENT'S EXHIBIT 4292 WAS RECEIVED IN EVIDENCE.)

02:06PM 25 BY MR. BOSTIC:

02:06PM 1 Q. OKAY. LET'S GO TO THE BOTTOM OF PAGE 2.

02:06PM 2 DO YOU SEE HERE THAT THIS BEGINS WITH AN EMAIL ABOUT, "A
02:06PM 3 PHYSICIAN CALLED TODAY ASKING WHY ISE'S WEREN'T INCLUDED ON A
02:06PM 4 FINAL REPORT"?

02:06PM 5 A. YES.

02:06PM 6 Q. AND DO YOU NOTE THAT IT SAYS THE LADY THAT THIS PERSON
02:06PM 7 SPOKE TO MENTIONED THAT THEY REALLY NEEDED THE SODIUM RESULT
02:06PM 8 BECAUSE THIS PATIENT HAD LOW SODIUM LEVELS AND THAT'S WHAT THEY
02:06PM 9 WERE CHECKING.

02:06PM 10 DO YOU SEE THAT?

02:06PM 11 A. YES.

02:06PM 12 Q. AND THEN IT SAYS, "I NOTICED THE SODIUM RESULTS WERE
02:06PM 13 CRITICAL LOW, SO I ASSUME THAT'S WHY WE AVOIDED IT."

02:06PM 14 DO YOU SEE THAT?

02:06PM 15 A. YES.

02:06PM 16 Q. AND EXPLAIN WHAT THAT MEANS IN TERMS OF THERANOS'S
02:06PM 17 PRACTICES AROUND THIS TIME.

02:06PM 18 A. AROUND THIS TIME, IF THE SODIUM VALUE WAS CRITICALLY LOW
02:06PM 19 OR BELOW REFERENCE RANGE, IT WOULD BE VOIDED. IT WOULD NOT BE
02:07PM 20 REPORTED.

02:07PM 21 HOWEVER, AS THIS EMAIL INDICATES, THAT LOW RESULT COULD
02:07PM 22 ACTUALLY BE THE TRUE RESULTS. YOU WOULDN'T KNOW EITHER WAY.

02:07PM 23 Q. OKAY. LET'S LOOK AT YOUR RESPONSE TO THIS ON THAT SAME
02:07PM 24 PAGE, PAGE 2. LET'S ZOOM IN ON YOUR MESSAGE.

02:07PM 25 AND YOU FORWARD THIS INFORMATION TO MR. BALWANI AND

02:07PM 1 MS. HOLMES DIRECTLY; RIGHT?

02:07PM 2 A. YES.

02:07PM 3 Q. AND YOU WRITE, "I WANTED TO BRING THIS IMPORTANT ISSUE TO
02:07PM 4 YOUR ATTENTION," AND YOU DISCUSS THE LAB'S PRACTICE OF VOIDING
02:07PM 5 THE RESULT IF THE SODIUM IS OUTSIDE OF A CERTAIN RANGE.

02:07PM 6 DO YOU SEE THAT?

02:07PM 7 A. YES.

02:07PM 8 Q. YOU WRITE, "BECAUSE WE HAVE NO WAY OF KNOWING FOR SURE
02:07PM 9 WHETHER THE RESULT IS TRULY ABNORMAL OR ARTIFACTUAL TO THE
02:07PM 10 ASSAY, OR RELATED TO A SPECIMEN INTEGRITY ISSUE."

02:07PM 11 DO YOU SEE THAT?

02:07PM 12 A. YES.

02:07PM 13 Q. IF THE THERANOS ASSAY HAD BEEN WORKING RELIABLY AND
02:08PM 14 ACCURATELY DURING THIS TIME PERIOD, WOULD YOU HAVE FELT THAT
02:08PM 15 UNCERTAINTY ABOUT THE VALIDITY THE RESULTS THAT YOU WERE
02:08PM 16 SEEING?

02:08PM 17 A. NO.

02:08PM 18 Q. IN THE THIRD PARAGRAPH OF YOUR EMAIL, IN THE MIDDLE YOU
02:08PM 19 WRITE "I AM NOT SURE OF THE CLINICAL VALUE OF THE SODIUM ASSAY
02:08PM 20 IN WHICH THE ONLY TIME WE CAN REPORT IT IS WHEN IT IS NOT
02:08PM 21 CRITICAL, AND THE VERY SITUATIONS THAT REQUIRE ACCURATE
02:08PM 22 MEASUREMENT AND REPORTING OF ABNORMAL OF SODIUM RESULTS ARE
02:08PM 23 VOIDED."

02:08PM 24 EXPLAIN WHAT YOU MEAN BY THAT.

02:08PM 25 A. SINCE WE ARE ONLY REPORTING RESULTS FOR SODIUM IN THIS

02:08PM 1 CASE THAT WERE NOT IN THE CRITICAL RANGE, EVERY RESULT WE PUT
02:08PM 2 OUT -- EVERY RESULT THAT THE LAB PUTS OUT FOR SODIUM SHOWS THAT
02:08PM 3 THE RESULT IS NORMAL. IF IT'S NOT NORMAL, THEN WE VOID IT.
02:08PM 4 SO IF A PATIENT HAD AN ABNORMAL SODIUM, THEY WOULD NEVER
02:08PM 5 KNOW.
02:08PM 6 SO, YOU KNOW, THERE ARE MEDICAL CONDITIONS THAT RESULT IN
02:09PM 7 SODIUM GOING CRITICAL THAT I WASN'T CONFIDENT IN REPORTING.
02:09PM 8 Q. AT THE END OF YOUR EMAIL YOU ASK, "HOW IS THE 4S SODIUM
02:09PM 9 DOING? MAYBE WE CAN USE THE 4S FOR ISE'S?"
02:09PM 10 DO YOU SEE THAT?
02:09PM 11 A. YES.
02:09PM 12 Q. IS THAT REFERENCING THE NEXT GENERATION THERANOS ANALYZER?
02:09PM 13 A. YES.
02:09PM 14 Q. AND REMIND US WHETHER YOU EVER SAW ONE OF THOSE NEXT
02:09PM 15 GENERATION THERANOS DEVICES IN PERSON?
02:09PM 16 A. I NEVER DID.
02:09PM 17 Q. WERE YOU EVER ABLE TO USE THE 4S DEVICE OR SOMETHING
02:09PM 18 SIMILAR TO SOLVE THIS ISE PROBLEM?
02:09PM 19 A. I WAS NOT.
02:09PM 20 Q. OKAY. YOU CAN SET THAT ASIDE.
02:10PM 21 ONE MORE EMAIL CHAIN ABOUT ISE'S. LET'S LOOK AT 4182.
02:10PM 22 A. I HAVE IT.
02:10PM 23 Q. AT 4182, DO YOU SEE AN EMAIL CHAIN FROM AUGUST OF 2013
02:10PM 24 RELATING TO A COLLECTION OF LABORATORY ISSUES?
02:10PM 25 A. YES.

02:10PM 1 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4182.

02:10PM 2 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

02:10PM 3 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:10PM 4 (GOVERNMENT'S EXHIBIT 4182 WAS RECEIVED IN EVIDENCE.)

02:10PM 5 BY MR. BOSTIC:

02:10PM 6 Q. OKAY, LET'S GO TO THE BOTTOM OF PAGE 3.

02:10PM 7 DO YOU SEE THAT WE'RE -- AT THE VERY BOTTOM OF THE PAGE,

02:10PM 8 WE'RE ABOUT TO LOOK AT AN EMAIL FROM TRACY MASSON?

02:11PM 9 A. OH, YES, RIGHT AT THE BOTTOM, UH-HUH.

02:11PM 10 Q. OKAY. LET'S LOOK AT THAT EMAIL ON PAGE 4.

02:11PM 11 OKAY. IN THIS EMAIL, THERE'S A REQUEST, "COULD YOU PLEASE

02:11PM 12 CHECK ON THESE RESULTS?"

02:11PM 13 AND IT'S SENT TO MR. BALWANI AND OTHERS AND THE SUBJECT IS

02:11PM 14 BOT EXPERIENCE.

02:11PM 15 DO YOU SEE THAT?

02:11PM 16 A. YES.

02:11PM 17 Q. IS BOT SHORT FOR PHLEBOTOMIST EXPERIENCE?

02:11PM 18 A. YES.

02:11PM 19 Q. "THESE ARE FOR," AND THEN WE'VE REDACTED THE NAME, ONE OF

02:11PM 20 OUR PHLEBOTOMISTS.

02:11PM 21 DO YOU SEE THAT?

02:11PM 22 A. YES, I SEE IT.

02:11PM 23 Q. AND THE TEXT IN BOLD SAYS, "I HAVE BEEN ON ANTICOAGULANT

02:11PM 24 FOR ABOUT 14 YEARS NOW. I HAVE BEEN WITHIN RECOMMENDED PT INR

02:11PM 25 RANGE FOR ABOUT 13 YEARS, PROMPTING THE SAME DOSAGE FOR OVER A

02:12PM 1 DECADE."

02:12PM 2 DO YOU SEE THAT?

02:12PM 3 A. YES.

02:12PM 4 Q. "I RECENTLY HAD MY STANDING ORDER SWITCHED TO THERANOS FOR

02:12PM 5 MY PT INR MONITORING."

02:12PM 6 DO YOU SEE THAT?

02:12PM 7 A. YES.

02:12PM 8 Q. AND IT SAYS, "FOR THE FIRST TIME I HAD A CTN DRAW FOR MY

02:12PM 9 PT INR."

02:12PM 10 DO YOU SEE THAT?

02:12PM 11 A. YES.

02:12PM 12 Q. "I WAS SURPRISED WHEN THE RESULTS CAME OUT OF RANGE TOO

02:12PM 13 LOW."

02:12PM 14 THERE'S THEN A MENTION OF A SECOND CTN RESULT THAT WAS

02:12PM 15 ALSO EXTREMELY LOW.

02:12PM 16 DO YOU SEE THAT?

02:12PM 17 A. YES.

02:12PM 18 Q. FIRST OF ALL, THE PT INR TEST, THIS IS NOT AN ISE TEST;

02:12PM 19 CORRECT?

02:12PM 20 A. IT IS NOT.

02:12PM 21 Q. IS THIS ANOTHER TYPE OF TEST THAT THERANOS OFFERED

02:12PM 22 PATIENTS?

02:12PM 23 A. YES.

02:12PM 24 Q. AND DESCRIBE FOR US WHAT PT INR IS AND WHY IT MATTERS.

02:12PM 25 A. SO PT STANDS FOR PROTHROMBIN, AND INR IS -- I THINK IT'S

02:12PM 1 INTERNATIONAL NOMALIZATION RATIO. IN ANY EVENT, THAT'S NOT
02:12PM 2 IMPORTANT.

02:12PM 3 WHAT THE ASSAY IS USED FOR IS TO MONITOR THE EFFECTIVENESS
02:13PM 4 OF THE ANTICOAGULANT COUMADIN.

02:13PM 5 Q. OKAY. IN THIS CASE THE PATIENT CONTINUES TO REPORT THAT
02:13PM 6 AFTER THE SECOND CTN RESULT FROM THERANOS WAS ALSO EXTREMELY
02:13PM 7 LOW, HER DOCTOR INCREASED HER COUMADIN FOR ONE DOSE.

02:13PM 8 DO YOU SEE THAT?

02:13PM 9 A. YES.

02:13PM 10 Q. AND SHE REPORTS THAT SHE HAS NOT FELT RIGHT SINCE THE ONE
02:13PM 11 INCREASED DOSE, AND SHE HAS ALSO EXPERIENCED OTHER PROBLEMATIC
02:13PM 12 SYMPTOMS.

02:13PM 13 DO YOU SEE THAT?

02:13PM 14 A. YES.

02:13PM 15 Q. AND SHE ALSO SAYS THAT SHE ASKED FOR ANOTHER STANDING
02:13PM 16 ORDER DRAW AT THE END OF HER SHIFT YESTERDAY.

02:13PM 17 THIS TIME SHE WANTED THE DRAW SWITCHED FROM CTN TO A
02:13PM 18 VENOUS DRAW.

02:13PM 19 DO YOU SEE THAT?

02:13PM 20 A. YES.

02:13PM 21 Q. AND WHAT WOULD THAT MEAN IN TERMS OF WHAT DEVICE WAS BEING
02:13PM 22 USED TO RUN THE TEST?

02:13PM 23 A. THE PT INR WAS BEING RUN USING AN LDT AT THIS POINT.

02:14PM 24 Q. DOES THAT MEAN A THERANOS SPECIFIC METHOD?

02:14PM 25 A. YES.

02:14PM 1 Q. AND WOULD SWITCHING TO A VENOUS DRAW MEAN THAT IT WAS NO
02:14PM 2 LONGER RUN ON A THERANOS SPECIFIC METHOD?

02:14PM 3 A. YES.

02:14PM 4 Q. LOOKING DOWN AT THE BOTTOM OF THIS PAGE, WE SEE THAT AFTER
02:14PM 5 THE VEIN DRAW IN THAT TEST, THE PATIENT SAYS, "MY DOCTOR JUST
02:14PM 6 CALLED ME BECAUSE MY PT INR RESULTS NOW SHOW THAT IT IS VERY
02:14PM 7 HIGH."

02:14PM 8 DO YOU SEE THAT?

02:14PM 9 A. YES.

02:14PM 10 Q. AND SO IT'S GONE FROM VERY LOW TO VERY HIGH AFTER
02:14PM 11 SWITCHING THE METHOD; CORRECT?

02:14PM 12 A. YES.

02:14PM 13 Q. LET'S LOOK AT PAGE 5 OF THIS EXHIBIT.

02:14PM 14 AND THIS PATIENT'S -- THE PHLEBOTOMIST'S EMAIL CONTINUES.

02:14PM 15 "FOR TESTING ACCURACY, I WILL BE GETTING BOTH A
02:14PM 16 VENIPUNCTURE AND A CTN DRAW ON MONDAY TO COMPARE RESULTS, AS
02:14PM 17 THIS INFORMATION WOULD BE OF UTMOST IMPORTANCE TO THERANOS AND
02:14PM 18 ULTIMATELY TO THE WELL-BEING OF OUR PATIENTS."

02:15PM 19 DO YOU SEE THAT?

02:15PM 20 A. YES.

02:15PM 21 Q. OKAY. LET'S GO TO PAGE 1 OF THIS EXHIBIT.

02:15PM 22 AND AT THE BOTTOM OF THE PAGE THERE'S A MESSAGE FROM
02:15PM 23 MR. BALWANI TO DANIEL YOUNG.

02:15PM 24 DO YOU SEE HE SAYS, "DANIEL. THE NET NET OF THIS SEEMS TO
02:15PM 25 SUGGEST THAT OUR PT WAS REPORTING RESULTS TOO LOW."

02:15PM 1 DO YOU SAY THAT?

02:15PM 2 A. YES.

02:15PM 3 Q. AND DO YOU AGREE THAT THAT SCENARIO INDICATED PROBLEMS
02:15PM 4 WITH THE REPORTING OF THE THERANOS PT TEST?

02:15PM 5 A. YES, ABSOLUTELY.

02:15PM 6 Q. ABOVE MR. BALWANI'S MESSAGE, DANIEL YOUNG WRITES, "AS I
02:15PM 7 MENTIONED, I HAD SOME CONCERNS A FEW WEEKS BACK ABOUT SAMPLE
02:15PM 8 STABILITY FOR PT INR."

02:15PM 9 DO YOU SEE THAT?

02:15PM 10 A. YES.

02:15PM 11 Q. ABOVE THAT MESSAGE, MR. BALWANI WRITES, ARE THERE ANY
02:16PM 12 OTHER ASSAYS THAT DR. YOUNG HAS CONCERNS WITH?

02:16PM 13 DO YOU SEE THAT?

02:16PM 14 A. YES.

02:16PM 15 Q. AND LET'S ZOOM IN ON DR. YOUNG'S RESPONSE. AND DO YOU SEE
02:16PM 16 THERE A LIST OF MULTIPLE THERANOS ASSAYS THAT DR. YOUNG WAS
02:16PM 17 TELLING MR. BALWANI THAT HE WAS CONCERNED ABOUT?

02:16PM 18 A. YES.

02:16PM 19 Q. AND THIS IS IN AUGUST 2014; CORRECT?

02:16PM 20 A. YES.

02:16PM 21 Q. APPROXIMATELY FOR HOW MANY MONTHS HAD THERANOS BEEN
02:16PM 22 OFFERING PATIENT TESTING AT THIS POINT?

02:16PM 23 A. ABOUT 11 MONTHS.

02:16PM 24 Q. LET'S LOOK AT 4181.

02:16PM 25 THE COURT: SHOULD WE TAKE OUR BREAK NOW? I THOUGHT

02:16PM 1 WE WOULD HAVE ONE LAST BREAK.

02:16PM 2 LET'S TAKE ABOUT 20 MINUTES, FOLKS, ABOUT 20 MINUTES.

02:16PM 3 MR. BOSTIC: YOUR HONOR, NOT TO DELAY IT, BUT AFTER

02:16PM 4 THIS LAST TWO MINUTE EXHIBIT, I'M SHIFTING GEARS.

02:17PM 5 THE COURT: OH, I DON'T WANT TO BREAK YOUR RHYTHM.

02:17PM 6 MR. BOSTIC: JUST TWO MORE MINUTES, YOUR HONOR.

02:17PM 7 THANK YOU.

02:17PM 8 THE COURT: LET'S DO THAT.

02:17PM 9 BY MR. BOSTIC:

02:17PM 10 Q. DR. ROSENDORFF, DO YOU HAVE 4181 IN FRONT OF YOU?

02:17PM 11 A. YES, I DO.

02:17PM 12 Q. AND IS THAT A CONTINUATION OF THE SAME EMAIL CHAIN THAT WE

02:17PM 13 WERE JUST LOOKING AT?

02:17PM 14 A. YES.

02:17PM 15 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4181.

02:17PM 16 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

02:17PM 17 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

02:17PM 18 (GOVERNMENT'S EXHIBIT 4181 WAS RECEIVED IN EVIDENCE.)

02:17PM 19 BY MR. BOSTIC:

02:17PM 20 Q. LET'S ZOOM IN ON THE TOP HALF OF PAGE 1.

02:17PM 21 DO YOU SEE THAT WE'RE LOOKING AT THAT SAME EMAIL MESSAGE

02:17PM 22 FROM DANIEL YOUNG TO MR. BALWANI ABOUT HIS CONCERNS ABOUT A

02:17PM 23 THERANOS TEST?

02:17PM 24 A. YES.

02:17PM 25 Q. AND HE MENTIONS A STUDY PLAN TO EVALUATE THE PROBLEM;

02:17PM 1 CORRECT?

02:17PM 2 A. YES.

02:17PM 3 Q. MR. BALWANI RESPONDS BY SENDING AN INDIVIDUAL MESSAGE TO

02:17PM 4 MS. HOLMES AT THE TOP OF THE PAGE.

02:17PM 5 DO YOU SEE THAT?

02:17PM 6 A. YES.

02:17PM 7 Q. AND HE WRITES, "ALWAYS ANOTHER STUDY AFTER THE FACT."

02:18PM 8 DO YOU SEE THAT LANGUAGE?

02:18PM 9 A. YES.

02:18PM 10 Q. WHEN YOU WERE LABORATORY DIRECTOR AT THERANOS, WERE YOU

02:18PM 11 AWARE OF A SERIES OF INTERNAL STUDIES THAT THE COMPANY WOULD DO

02:18PM 12 TO TRY TO FIGURE OUT WHY IT WAS HAVING PROBLEMS WITH TESTS?

02:18PM 13 A. YES, CONSTANTLY.

02:18PM 14 Q. GENERALLY SPEAKING, DID YOU DRAW ANY COMFORT FROM THE

02:18PM 15 RESULTS OF THOSE STUDIES?

02:18PM 16 LET ME ASK IT A DIFFERENT WAY. DID THE STUDIES CONDUCTED

02:18PM 17 INTERNALLY AT THERANOS RESOLVE YOUR CONCERNS ABOUT THE ACCURACY

02:18PM 18 AND RELIABILITY OF THE THERANOS TESTS?

02:18PM 19 A. THE FIRST FEW TIMES IT HAPPENED, I WOULD SAY YES. I WOULD

02:18PM 20 LOOK AT THE STUDY DATA AND THINGS SEEMED TO BE CORRECTED.

02:18PM 21 BUT AS TIME WENT ON, BY AND LARGE, NO, THEY DID NOT.

02:18PM 22 Q. GENERALLY SPEAKING, DID THOSE STUDIES RESULT IN PERMANENT

02:18PM 23 FIXES TO THE ACCURACY PROBLEMS THAT YOU WERE SEEING?

02:18PM 24 A. THEY DID NOT.

02:19PM 25 MR. BOSTIC: THIS MIGHT BE A GOOD TIME FOR A BREAK,

02:19PM 1 YOUR HONOR. THANK YOU.

02:19PM 2 THE COURT: ALL RIGHT. LET'S TAKE 20 MINUTES.

02:19PM 3 THANK YOU.

02:43PM 4 (RECESS FROM 2:19 P.M. UNTIL 2:43 P.M.)

02:43PM 5 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD.

02:43PM 6 ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

02:44PM 7 OUR JURY IS PRESENT.

02:44PM 8 MR. BOSTIC.

02:44PM 9 MR. BOSTIC: THANK YOU, YOUR HONOR.

02:44PM 10 Q. DR. ROSENDORFF, BEFORE THE BREAK WE WERE TALKING ABOUT
02:44PM 11 SOME INSTANCES INVOLVING THERANOS TEST RESULTS AND QUESTIONS
02:44PM 12 AND COMPLAINTS FROM PATIENTS AND DOCTORS; CORRECT?

02:44PM 13 A. YES.

02:44PM 14 Q. AND DO YOU RECALL SEEING INSTANCES OF THOSE WHERE THOSE
02:44PM 15 REPORTS FROM OUTSIDE OF THERANOS WERE FORWARDED ALONG TO
02:44PM 16 MR. BALWANI?

02:44PM 17 A. YES.

02:44PM 18 Q. CAN I ASK YOU TO TURN TO TAB 4520 IN YOUR BINDER, PLEASE.
02:44PM 19 4520.

02:44PM 20 A. YES.

02:44PM 21 Q. AND AT 4520, DO YOU SEE AN EMAIL FROM MAX FOSQUE TO
02:44PM 22 MR. BALWANI IN SEPTEMBER OF 2015?

02:44PM 23 A. YES.

02:44PM 24 Q. AND I'LL ASK YOU TO LOOK AT THE FIRST ATTACHMENT TO THAT
02:44PM 25 EMAIL, WHICH IS ON PAGE 2 OF THE EXHIBIT.

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A. YES.

Q. AND -- WELL, LET ME ASK YOU, HAVE YOU REVIEWED THIS DOCUMENT PRIOR TO THIS MOMENT?

A. YES, I HAVE.

Q. OKAY. ARE YOU FAMILIAR, GENERALLY, WITH THE CONTENTS OF THIS DOCUMENT?

A. YES.

Q. DOES IT CONTAIN A WRITE-UP OF COMPLAINTS THAT YOU WERE FAMILIAR WITH DURING YOUR TIME AT THE COMPANY?

A. SOME OF THEM I RECALL, AND SOME OF THEM I DON'T RECALL.

MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4520.

MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

(GOVERNMENT'S EXHIBIT 4520 WAS RECEIVED IN EVIDENCE.)

MR. BOSTIC: AND, YOUR HONOR, 4520 HAS TWO ATTACHMENTS. MY PLAN IS -- BOTH ATTACHMENTS HAVE PERSONALLY IDENTIFIABLE INFORMATION OF PATIENTS.

WE WON'T PUBLISH THOSE. WE HAVE A REDACTED VERSION OF THE FIRST ATTACHMENT, AND WE WON'T PUBLISH THE SECOND ATTACHMENT FOR TODAY.

THE COURT: ALL RIGHT. THANK YOU.

BY MR. BOSTIC:

Q. SO, DR. ROSENDORFF, LOOKING AT THE EMAIL ITSELF, THIS IS DATED SEPTEMBER 14TH, 2015.

DO YOU SEE THAT?

02:46PM 1 A. YES.

02:46PM 2 Q. AND CAN YOU REMIND US WHEN YOU LEFT THE COMPANY?

02:46PM 3 A. I LEFT IN NOVEMBER OF 2014.

02:46PM 4 Q. OKAY.

02:46PM 5 A. THIS WOULD BE ALMOST A YEAR AFTER I LEFT.

02:46PM 6 Q. OKAY. MR. FOSQUE WRITES MR. BALWANI, HE SAYS, "SEE MY

02:46PM 7 UPDATES ATTACHED."

02:46PM 8 AND THEN THERE ARE TWO DOCUMENTS ATTACHED, ONE IS

02:46PM 9 APPENDIX B, AND THEN THERE'S AN ATTACHMENT FINAL LOG OF

02:46PM 10 COMPLAINTS AND IRQ'S.

02:46PM 11 DO YOU SEE THAT?

02:46PM 12 A. YES.

02:46PM 13 Q. LET'S GO TO PAGE 2 OF THIS EXHIBIT AND LOOK AT SOME OF THE

02:46PM 14 CONTENT IN THAT FIRST ATTACHMENT.

02:46PM 15 FIRST OF ALL, DO YOU SEE THAT THE TITLE OF THIS DOCUMENT

02:46PM 16 IS PATIENTS MENTIONED IN ROSENDORFF'S EMAILS?

02:46PM 17 A. YES.

02:46PM 18 Q. AND SO, FOR EXAMPLE, JUST HIGHLIGHTING A FEW OF THESE

02:46PM 19 EXAMPLES, DO YOU SEE THAT UNDER ITEM 1, ABOUT HALFWAY DOWN THIS

02:46PM 20 PAGE, IT SAYS, "ROSENDORFF NOTED THAT A REVIEW OF DATA SHOWED

02:47PM 21 THAT CALCIUM DATA WAS RUNNING HIGH?"

02:47PM 22 A. YES, I SEE THAT.

02:47PM 23 Q. AND DO YOU RECALL PROBLEMS WITH CALCIUM RESULTS DURING

02:47PM 24 YOUR TIME AT THERANOS?

02:47PM 25 A. YES, I DO.

02:47PM 1 Q. AND LET'S LOOK BRIEFLY AT PAGE 4 OF THIS EXHIBIT.

02:47PM 2 DO YOU SEE A HEADING IN THIS MEMO TO MR. BALWANI THAT
02:47PM 3 READS ISE AND POTASSIUM RESULTS AROUND MARCH 2014?

02:47PM 4 A. YES.

02:47PM 5 Q. AND HALFWAY DOWN THAT FIRST PARAGRAPH, DO YOU SEE LANGUAGE
02:47PM 6 THAT SAYS, "DANIEL YOUNG NOTED THAT THE DATA LOOKED 'VERY BAD'
02:47PM 7 FOR A TABLE OF CHLORIDE, POTASSIUM, AND SODIUM RESULTS AND THE
02:47PM 8 RERUN RESULTS WERE NOT GOOD (VERY HIGH)."

02:47PM 9 DO YOU SEE THAT LANGUAGE?

02:47PM 10 A. YES.

02:47PM 11 Q. AND DO YOU RECALL PROBLEMS AT THERANOS WITH THESE ASSAYS
02:48PM 12 IN MARCH OF 2014?

02:48PM 13 A. YES, I DO.

02:48PM 14 Q. FURTHER DOWN, DO YOU SEE THERE'S REFERENCE TO, IN THE
02:48PM 15 SECOND PARAGRAPH THERE, THERANOS MEASURING A CERTAIN NUMBER OF
02:48PM 16 POTASSIUMS AND AN OBSERVATION ABOUT HOW MANY WERE OUT OF RANGE
02:48PM 17 HIGH?

02:48PM 18 A. YES.

02:48PM 19 Q. AND DO YOU REMEMBER WHETHER YOU VIEWED THAT AS A SIGN OF
02:48PM 20 PROBLEMS WITH THE RELIABILITY OF THE THERANOS ASSAY?

02:48PM 21 A. ABSOLUTELY.

02:48PM 22 Q. AND THE LAST PARAGRAPH THERE, OR THE THIRD PARAGRAPH, IT
02:48PM 23 SAYS, "ON APRIL 22ND, 2014, ROSENDORFF WROTE TO SUNNY BALWANI,
02:48PM 24 'I WANTED TO ALERT YOU TO A PROBLEM WITH THE ISE RESULTS.'"

02:48PM 25 WE JUST DISCUSSED THIS, BUT DO YOU RECALL THERANOS

02:48PM 1 EXPERIENCING NUMEROUS PROBLEMS WITH ISE RESULTS DURING THIS
02:48PM 2 TIME PERIOD?

02:49PM 3 A. YES, I DO.

02:49PM 4 Q. LET'S LOOK AT PAGE 9 OF THIS EXHIBIT.

02:49PM 5 AND AT THE BOTTOM OF THAT PAGE YOU'LL SEE THERE'S A
02:49PM 6 HEADING ABOUT VITAMIN D RESULTS IN OCTOBER AND NOVEMBER OF
02:49PM 7 2014.

02:49PM 8 DO YOU SEE THAT?

02:49PM 9 A. YES, I SEE IT.

02:49PM 10 Q. AND DO YOU SEE SOME DISCUSSION THERE ABOUT CONCERNS ABOUT
02:49PM 11 THE REPRODUCIBILITY OF THE ASSAY?

02:49PM 12 A. YES. YES.

02:49PM 13 Q. DO YOU RECALL --

02:49PM 14 A. THIS IS FROM MR. MORIN. THESE ARE HIS WORDS, I BELIEVE.

02:49PM 15 Q. YES. THANK YOU.

02:49PM 16 DO YOU RECALL IN OCTOBER AND NOVEMBER OF 2014 THERANOS
02:50PM 17 HAVING PROBLEMS WITH ITS VITAMIN D ASSAY?

02:50PM 18 A. YES.

02:50PM 19 MR. BOSTIC: MAY I APPROACH, YOUR HONOR?

02:50PM 20 THE COURT: YES.

02:50PM 21 MR. BOSTIC: (HANDING.)

02:50PM 22 SO I'VE JUST HANDED THE WITNESS A VERSION OF THE SECOND
02:50PM 23 ATTACHMENT TO THIS EMAIL, AND THIS ATTACHMENT IS PRESENT IN THE
02:50PM 24 BINDERS THAT WERE GIVEN TO THE COURT AND COUNSEL.

02:50PM 25 THE COURT: OKAY.

02:50PM 1 BY MR. BOSTIC:

02:50PM 2 Q. DR. ROSENDORFF, DO YOU HAVE IN FRONT OF YOU A PRINTOUT OF
02:50PM 3 AN EXCEL TABLE?

02:50PM 4 A. YES, I DO.

02:50PM 5 Q. AND I WON'T ASK YOU TO READ ANY OF THE CONTENT, OR TO READ
02:50PM 6 OUT LOUD ANY OF THE CONTENT, BUT DO YOU SEE THAT THAT TABLE
02:50PM 7 CONTAINS WRITE-UPS OF NUMEROUS COMPLAINTS AND QUESTIONS SENT IN
02:50PM 8 TO THERANOS ABOUT ITS TEST RESULTS?

02:50PM 9 A. YES, IT DOES.

02:50PM 10 Q. OKAY. THANK YOU. YOU CAN SET THAT ASIDE.

02:51PM 11 DR. ROSENDORFF, DURING YOUR TIME AT THE COMPANY, DID YOU
02:51PM 12 HAVE ANY REACTIONS TO PUBLIC INFORMATION THAT YOU SAW ABOUT THE
02:51PM 13 COMPANY'S TECHNOLOGY OR WHAT IT COULD DO?

02:51PM 14 A. YES, I DID.

02:51PM 15 Q. WHAT DO YOU REMEMBER IN THAT REGARD?

02:51PM 16 A. I REMEMBER A "FORTUNE" ARTICLE BY ROGER PARLOFF.
02:51PM 17 BASICALLY IT WAS, IT WAS AN INTERVIEW WITH ELIZABETH, AND IT
02:51PM 18 MADE A NUMBER OF CLAIMS REGARDING THERANOS TECHNOLOGY THAT WERE
02:51PM 19 JUST NOT TRUE.

02:51PM 20 Q. DO YOU REMEMBER SEEING THAT ARTICLE AROUND THE TIME THAT
02:51PM 21 IT CAME OUT?

02:51PM 22 A. YES. YES.

02:51PM 23 Q. HOW DID THAT -- HOW DID SEEING THAT ARTICLE MAKE YOU FEEL
02:52PM 24 ABOUT YOUR EMPLOYMENT WITH THE COMPANY?

02:52PM 25 MR. COOPERSMITH: OBJECTION. RELEVANCE.

02:52PM 1 THE COURT: SUSTAINED.

02:52PM 2 BY MR. BOSTIC:

02:52PM 3 Q. DID YOU HAVE ANY CONVERSATIONS WITH ANYONE AT THERANOS
02:52PM 4 ABOUT WHAT YOU HAD SEEN IN THAT "FORTUNE" ARTICLE?

02:52PM 5 A. NO, I DID NOT.

02:52PM 6 Q. WHY DID YOU NOT RAISE THE FALSE STATEMENTS YOU SAW IN THAT
02:52PM 7 ARTICLE TO MR. BALWANI, FOR EXAMPLE?

02:52PM 8 MR. COOPERSMITH: OBJECTION. RELEVANCE.

02:52PM 9 THE COURT: I'M SORRY?

02:52PM 10 MR. COOPERSMITH: OBJECTION. RELEVANCE.

02:52PM 11 THE COURT: OVERRULED.

02:52PM 12 THE WITNESS: I DIDN'T THINK IT WAS MY PLACE TO, TO
02:52PM 13 MONITOR THE COMPANY'S COMMUNICATION TO JOURNALISTS.

02:52PM 14 MY JOB WAS TO TRY TO MAINTAIN THE QUALITY OF LABORATORY
02:52PM 15 TESTING.

02:52PM 16 BY MR. BOSTIC:

02:52PM 17 Q. CAN I ASK YOU TO TURN TO 4047 IN YOUR BINDER.

02:53PM 18 A. I HAVE IT.

02:53PM 19 Q. OKAY. IN 4047, DO YOU SEE AN EMAIL CHAIN INCLUDING
02:53PM 20 YOURSELF, MR. BALWANI, AND MS. HOLMES RELATING TO AN UPCOMING
02:53PM 21 INSPECTION OF THERANOS?

02:53PM 22 A. YES, I DO.

02:53PM 23 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4047.

02:53PM 24 MR. COOPERSMITH: I'M SORRY, YOUR HONOR. THERE'S A
02:53PM 25 GLITCH IN MY BINDER THAT DOESN'T HAVE THE EXHIBIT.

02:53PM 1 MR. BOSTIC: WE CAN PROVIDE AN EXTRA.

02:53PM 2 (PAUSE IN PROCEEDINGS.)

02:54PM 3 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

02:54PM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:54PM 5 (GOVERNMENT'S EXHIBIT 4047 WAS RECEIVED IN EVIDENCE.)

02:54PM 6 BY MR. BOSTIC:

02:54PM 7 Q. DR. ROSENDORFF, WE'RE LOOKING AT AN EMAIL FROM

02:54PM 8 NOVEMBER 2013; CORRECT?

02:54PM 9 A. YES.

02:54PM 10 Q. AROUND THIS TIME, WAS THERE AN INSPECTION OF THERANOS BY

02:54PM 11 AUDITORS?

02:54PM 12 A. YES, THERE WAS.

02:54PM 13 Q. AND CAN YOU EXPLAIN WHAT THAT MEANS?

02:54PM 14 A. ANY CLIA LABORATORY IS INSPECTED ONCE WHEN IT OPENS UP,

02:54PM 15 AND THEN THE INSPECTORS COME ON SITE AGAIN SHORTLY THEREAFTER,

02:54PM 16 AND THEN AFTER THAT THEY COME ONCE EVERY TWO YEARS TO INSPECT.

02:54PM 17 SO THESE WOULD BE FOLKS FROM LABORATORY FIELD SERVICES

02:55PM 18 THAT WOULD BE ENFORCING THE CMS REGULATIONS, CLIA REGULATIONS.

02:55PM 19 Q. LOOKING AT THIS EMAIL, LET'S ZOOM IN ON THE TEXT OF

02:55PM 20 MS. HOLMES'S EMAIL.

02:55PM 21 AND SHE WRITES TO DANIEL YOUNG, YOU, AND OTHERS AT

02:55PM 22 THERANOS, CC'ING MR. BALWANI; CORRECT?

02:55PM 23 A. YES.

02:55PM 24 Q. AND SHE SAYS, "LET ME KNOW IF THE PATH FOR WALKING THE

02:55PM 25 AUDITORS IN AND DOWNSTAIRS HAS BEEN CEMENTED SO WE AVOID AREAS

02:55PM 1 THAT CANNOT BE ACCESSED, AND WHAT THAT PATH IS."

02:55PM 2 DO YOU SEE THAT?

02:55PM 3 A. YES.

02:55PM 4 Q. AND THEN LET'S LOOK AT THE FOLLOW-UP MESSAGE FROM

02:55PM 5 MS. HOLMES.

02:55PM 6 SHE SAYS, "(KERRY PLEASE DELINEATE THIS BASED ON WHAT WE
02:55PM 7 DID WITH THE NEW YORK INSPECTOR RECENTLY AND SEND THAT OUT)."

02:55PM 8 DO YOU SEE THAT?

02:55PM 9 A. YES, I DO.

02:55PM 10 Q. AROUND THIS TIME, DO YOU RECALL OTHER DISCUSSION ABOUT
02:56PM 11 AREAS OF THE THERANOS FACILITY THAT SHOULD OR SHOULD NOT BE
02:56PM 12 ACCESSED DURING THIS INSPECTION?

02:56PM 13 A. YES. MR. BALWANI WAS VERY CLEAR THAT THE INSPECTORS
02:56PM 14 SHOULDN'T GO INTO THE R&D AREAS; THAT THE INSPECTORS SHOULDN'T
02:56PM 15 GO INTO THE NORMANDY LAB.

02:56PM 16 Q. AND ARE YOU DESCRIBING A CONVERSATION THAT YOU HAD WITH
02:56PM 17 MR. BALWANI IN PERSON OR OVER THE PHONE?

02:56PM 18 A. IT'S, IT'S MY RECOLLECTION. I CAN'T POINT TO A SPECIFIC
02:56PM 19 CONVERSATION THAT I HAD WITH HIM.

02:56PM 20 Q. THE DIRECTION THAT MR. BALWANI GAVE AS TO ACCESSING THE
02:56PM 21 NORMANDY LAB.

02:56PM 22 FIRST OF ALL, WHAT WAS THE NORMANDY LAB?

02:56PM 23 MR. COOPERSMITH: OBJECTION, YOUR HONOR. HE DOESN'T
02:56PM 24 REMEMBER THE CONVERSATION, SO --

02:56PM 25 THE COURT: WELL, I THINK THE QUESTION WAS, WHAT WAS

02:56PM 1 THE NORMANDY LAB?

02:56PM 2 MR. COOPERSMITH: WELL, HE CAN ANSWER THAT ONE, YES,

02:57PM 3 YOUR HONOR.

02:57PM 4 THE COURT: I THINK SO TOO.

02:57PM 5 YOU CAN ANSWER THE QUESTION, SIR.

02:57PM 6 THE WITNESS: THE NORMANDY LAB WAS THE DOWNSTAIRS

02:57PM 7 LAB IN THE BASEMENT ESSENTIALLY OF THE BUILDING WHERE ALL OF

02:57PM 8 THE THERANOS TESTS WERE BEING RUN.

02:57PM 9 BY MR. BOSTIC:

02:57PM 10 Q. AND I UNDERSTAND YOU CAN'T PLACE A SPECIFIC CONVERSATION

02:57PM 11 IN TIME IN YOUR MIND, BUT WHAT DIRECTION DO YOU REMEMBER, IF

02:57PM 12 ANY, GETTING FROM MR. BALWANI ABOUT ACCESS TO THE NORMANDY LAB

02:57PM 13 DURING THIS INSPECTION?

02:57PM 14 A. THAT FOLKS SHOULD NOT BE GOING IN AND OUT OF THE LAB

02:57PM 15 DURING THE PERIOD OF THE INSPECTION.

02:57PM 16 Q. DID YOU ALSO HAVE DISCUSSIONS WITH DANIEL YOUNG ABOUT THE

02:57PM 17 NORMANDY LAB AND THE INSPECTORS WHO WOULD BE CONDUCTING THIS

02:57PM 18 INSPECTION?

02:57PM 19 A. WHEN THE INSPECTORS CAME ON SITE, WE WENT INTO A

02:57PM 20 CONFERENCE ROOM, AND WE WERE SHOWING THEM THE VALIDATION

02:57PM 21 REPORTS FOR THE EDISON AND FOR THE THERANOS GENERAL CHEMISTRY

02:57PM 22 TESTS, AND I EMAILED DR. YOUNG AND SAID, ESSENTIALLY, YOU KNOW,

02:58PM 23 SHOULD WE MENTION THE NORMANDY LAB TO THEM? AND HE RESPONDED,

02:58PM 24 NOT UNLESS THEY EXPLICITLY ASK US.

02:58PM 25 Q. AND WERE YOU WITH THE INSPECTORS FOR SOME OR ALL OF THE

02:58PM 1 INSPECTION THAT THEY CONDUCTED AT THIS TIME?

02:58PM 2 A. SOME OF IT. NOT ALL OF IT.

02:58PM 3 Q. TO YOUR KNOWLEDGE, DID THOSE INSPECTORS EVER ACTUALLY TOUR

02:58PM 4 THE NORMANDY SECTION OF THE LAB?

02:58PM 5 A. NOT TO MY KNOWLEDGE.

02:58PM 6 Q. TO YOUR KNOWLEDGE, DID THOSE INSPECTORS EVER SEE AN EDISON

02:58PM 7 DEVICE?

02:58PM 8 A. NOT TO MY KNOWLEDGE.

02:58PM 9 Q. OKAY. WE CAN SET THOSE ASIDE.

02:58PM 10 LET'S LOOK AT 4323, AND I WANT TO START TO TALK ABOUT THE

02:58PM 11 CIRCUMSTANCES OF YOUR DEPARTURE FROM THE COMPANY.

02:58PM 12 A. YES.

02:58PM 13 Q. SO TAB 4323.

02:59PM 14 A. OKAY. I HAVE IT.

02:59PM 15 Q. OKAY. IS THAT AN EMAIL CHAIN INCLUDING MR. BALWANI, AND

02:59PM 16 FURTHER DOWN YOU, FROM NOVEMBER OF 2014?

02:59PM 17 A. YES.

02:59PM 18 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4323.

02:59PM 19 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

02:59PM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:59PM 21 (GOVERNMENT'S EXHIBIT 4323 WAS RECEIVED IN EVIDENCE.)

02:59PM 22 BY MR. BOSTIC:

02:59PM 23 Q. OKAY. LET'S START WITH THE FIRST EMAIL, WHICH IS ON

02:59PM 24 PAGE 4.

02:59PM 25 AND DO YOU SEE THIS BEGINS WITH AN EMAIL TO

02:59PM 1 CHRISTIAN HOLMES ABOUT AN ESCALATED CALL FROM A DOCTOR, OR A
02:59PM 2 DOCTOR'S OFFICE?
02:59PM 3 A. OH. THIS EMAIL IS FROM MEGAN TO CHRISTIAN.
02:59PM 4 Q. OKAY. AND DO YOU SEE THAT IT RELATES TO A CALL FROM A
02:59PM 5 MEDICAL PRACTICE?
02:59PM 6 A. YES.
02:59PM 7 Q. OKAY. AND IT SAYS THAT THE DOCTOR AT THIS PRACTICE IS
03:00PM 8 CONCERNED ABOUT THE HDL AND LDL RESULTS IN THE LIPID PANEL FOR
03:00PM 9 A GIVEN PATIENT.
03:00PM 10 DO YOU SEE THAT?
03:00PM 11 A. YES.
03:00PM 12 Q. AND IT'S REPORTED THAT THE HDL AND LDL ARE NOT ADDING UP,
03:00PM 13 AND SO THE THOUGHT IS THAT THE LDL IS A FALSE READING.
03:00PM 14 DO YOU SEE THAT?
03:00PM 15 A. YES.
03:00PM 16 Q. CAN YOU EXPLAIN WHAT THAT MEANS? AND START BY TELLING US
03:00PM 17 ABOUT THE RELATIONSHIP BETWEEN HDL AND LDL.
03:00PM 18 A. WELL, THEY'RE BOTH FORMS OF CHOLESTEROL.
03:00PM 19 LDL IS THE BAD CHOLESTEROL, AND HDL IS THE GOOD ONE.
03:00PM 20 THESE CHOLESTEROL METABOLIZE IN THE LIVER AND CONVERT INTO
03:00PM 21 THESE DIFFERENT FORMS, AND THE RELATIONSHIP BETWEEN THE TWO IS
03:00PM 22 THAT THERE'S AN EQUATION WHERE YOU ADD UP THE HDL AND LDL AND
03:00PM 23 DO A FEW OTHER THINGS AND THEN YOU GET TO WHAT THE TOTAL
03:01PM 24 CHOLESTEROL SHOULD BE.
03:01PM 25 Q. AND LET'S GO TO PAGE 3 OF THIS EXHIBIT AND WE'LL SEE SOME

03:01PM 1 MORE ABOUT THAT.

03:01PM 2 AND LOOK AT YOUR EMAIL AT THE BOTTOM OF THIS PAGE.

03:01PM 3 AND, FIRST OF ALL, YOU REPORT THAT YOU HAVE SPOKEN TO THE
03:01PM 4 DOCTOR'S PRACTICE AND INDICATED THAT THERANOS WOULD ATTEMPT TO
03:01PM 5 RERUN THE SAMPLE.

03:01PM 6 DO YOU SEE THAT?

03:01PM 7 A. YES.

03:01PM 8 Q. AND THEN YOU EXPLAIN THAT THE PROBLEM IS THAT THE SUM OF
03:01PM 9 THE LDL AND THE HDL ARE GREATER THAN THE TOTAL CHOLESTEROL
03:01PM 10 MEASUREMENT?

03:01PM 11 A. YES.

03:01PM 12 Q. SO YOU SAY ONE OR MORE OF THESE MEASUREMENTS MUST BE
03:01PM 13 INCORRECT.

03:01PM 14 DO YOU SEE THAT?

03:01PM 15 A. YES.

03:01PM 16 Q. AND YOU THEN SAY, "THERE ARE NO PATIENT FACTORS THAT CAN
03:01PM 17 EXPLAIN THIS."

03:01PM 18 WHAT DID YOU MEAN BY THAT?

03:01PM 19 A. THERE'S NO -- THERE'S NOTHING THAT THE PATIENT HAD EATEN,
03:01PM 20 THERE'S NO DRUG THAT THE PATIENT MIGHT HAVE BEEN TAKING,
03:01PM 21 THERE'S NO DISEASE THAT THE PATIENT MIGHT HAVE HAD THAT WOULD
03:01PM 22 EXPLAIN THIS DISCREPANCY BETWEEN THE CALCULATED TOTAL
03:02PM 23 CHOLESTEROL, WHICH IS AT LEAST 230, AND WHAT WAS MEASURED,
03:02PM 24 WHICH WAS 221.

03:02PM 25 Q. OKAY. LET'S LOOK AT PAGE 2, AND THE BOTTOM HALF OF THAT

03:02PM 1 PAGE.

03:02PM 2 AND FIRST, DO YOU SEE AN EMAIL FROM CHRISTIAN HOLMES TO

03:02PM 3 YOU AND OTHERS WHERE HE OFFERS A RESPONSE EXPLAINING THAT

03:02PM 4 DISCREPANCY?

03:02PM 5 A. YES.

03:02PM 6 Q. AND HE GOES INTO THE MARGINS OF ERROR UNDER CLIA.

03:02PM 7 DO YOU SEE THAT?

03:02PM 8 A. YES.

03:02PM 9 Q. AND AN OFFERED EXPLANATION, IN OTHER WORDS; IS THAT

03:02PM 10 CORRECT?

03:02PM 11 A. YES.

03:02PM 12 Q. AND YOUR EMAIL ABOVE SAYS, "I'M GOING TO PASS ON THIS

03:02PM 13 ONE."

03:02PM 14 DO YOU SEE THAT?

03:02PM 15 A. YES.

03:02PM 16 Q. AND WHAT DID YOU MEAN BY THAT?

03:02PM 17 A. I HAD HAD ENOUGH. I WAS TIRED OF RUNNING INTERFERENCE FOR

03:03PM 18 THERANOS, COMING UP WITH JUSTIFICATIONS OR EXPLANATIONS FOR

03:03PM 19 THINGS THAT DIDN'T MAKE SENSE.

03:03PM 20 I DIDN'T FEEL THAT I WAS BEING RESPONSIBLE AS A PHYSICIAN

03:03PM 21 TALKING TO OTHER PHYSICIANS.

03:03PM 22 Q. SO PARTICULARLY IN THIS CASE, WHAT WERE YOU UNWILLING TO

03:03PM 23 DO?

03:03PM 24 A. TO EXPLAIN AWAY THE DISCREPANCY OR TO JUSTIFY IT SAYING

03:03PM 25 THAT, YOU KNOW, THAT THERE'S A 10 PERCENT ERROR, WHICH WOULD

03:03PM 1 MAKE IT ACCEPTABLE.

03:03PM 2 Q. OKAY. LET'S LOOK AT YOUR RESPONSE.

03:03PM 3 CHRISTIAN HOLMES ASKS YOU TO CLARIFY WHAT YOU MEAN, AND

03:03PM 4 ABOVE THAT LET'S LOOK AT WHAT YOU SAY.

03:03PM 5 YOU SAY ON NOVEMBER 14TH, 2014, ABOUT THESE HDL AND LDL

03:03PM 6 RESULTS, "IF YOU'RE ASKING ME TO DEFEND THESE VALUES, THEN THE

03:03PM 7 ANSWER IS NO."

03:03PM 8 DO YOU SEE THAT?

03:03PM 9 A. YES.

03:03PM 10 Q. AND IS THAT FOR THE REASON THAT YOU JUST DESCRIBED?

03:03PM 11 A. YES.

03:03PM 12 Q. AND LET'S LOOK AT PAGE 1. AND AT THE BOTTOM OF THE PAGE,

03:04PM 13 CHRISTIAN HOLMES, MS. HOLMES'S BROTHER, WRITES BACK TO YOU AND

03:04PM 14 SAID, "ADAM, IF YOU ARE GOING TO REFUSE TO SPEAK WITH A

03:04PM 15 CLINICIAN WHO IS ASKING TO SPEAK WITH OUR LAB DIRECTOR ABOUT

03:04PM 16 INTERPRETING A PATIENT'S RESULTS, THEN SO BE IT, BUT SIMPLY

03:04PM 17 PASSING ON GETTING BACK TO THIS DOC IS NOT AN OPTION."

03:04PM 18 DO YOU SEE THAT?

03:04PM 19 A. YES.

03:04PM 20 Q. AND HE THEN INCLUDES DANIEL YOUNG.

03:04PM 21 DO YOU SEE THAT?

03:04PM 22 A. YES.

03:04PM 23 Q. AND LET'S GO UP IN THIS CHAIN. IF WE CAN CAPTURE THE TOP

03:04PM 24 HALF OF THE PAGE.

03:04PM 25 OKAY. FIRST, DO YOU SEE CHRISTIAN HOLMES THEN EMAILS

03:04PM 1 SUNNY BALWANI AND ELIZABETH HOLMES ABOUT THIS?

03:04PM 2 A. YES.

03:04PM 3 Q. AND ESSENTIALLY HE IS COMPLAINING ABOUT YOUR REFUSAL TO

03:04PM 4 SPEAK TO THIS DOCTOR AND JUSTIFY THE RESULTS; CORRECT?

03:04PM 5 A. YES, HE IS.

03:04PM 6 Q. MS. HOLMES WRITES BACK TO HER BROTHER, "YOU HANDLED THIS

03:04PM 7 EXCELLENTLY. THE LAST NOTE TO ADAM BELOW, ESPECIALLY THE

03:05PM 8 SECOND SENTENCE, WAS EXACTLY RIGHT."

03:05PM 9 DO YOU SEE THAT?

03:05PM 10 A. YES.

03:05PM 11 Q. AND MR. BALWANI IS INCLUDED ON THAT EMAIL?

03:05PM 12 A. YES, HE IS.

03:05PM 13 Q. LET'S LOOK AT 4314.

03:05PM 14 A. I HAVE IT.

03:05PM 15 Q. OKAY. AND IS THIS A CONTINUATION OF THAT SAME EMAIL

03:05PM 16 CHAIN?

03:05PM 17 A. YES.

03:05PM 18 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4314.

03:05PM 19 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

03:05PM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:05PM 21 (GOVERNMENT'S EXHIBIT 4314 WAS RECEIVED IN EVIDENCE.)

03:05PM 22 BY MR. BOSTIC:

03:05PM 23 Q. AND LET'S GO TO PAGE 2 AND ZOOM IN ON THE TOP THIRD OR SO.

03:05PM 24 OKAY. SO DO YOU SEE HERE YOUR RESPONSE TO

03:05PM 25 CHRISTIAN HOLMES'S EMAIL ABOUT YOUR REFUSAL TO JUSTIFY THE

03:05PM 1 RESULTS?

03:05PM 2 A. YES.

03:05PM 3 Q. AND YOU WRITE, "I WILL HAPPILY SPEAK TO THE CLINICIAN BUT

03:06PM 4 I WILL NOT DEFEND THE RESULTS. I THINK THIS IS WHAT YOU ARE

03:06PM 5 LOOKING FOR NO?"

03:06PM 6 DO YOU SEE THAT?

03:06PM 7 A. YES.

03:06PM 8 Q. AND LET'S GO TO PAGE 1 AND ZOOM IN ON THE BOTTOM OF THE

03:06PM 9 PAGE.

03:06PM 10 YOU SEND A FOLLOW-UP EMAIL WITHOUT GETTING A RESPONSE

03:06PM 11 BACK.

03:06PM 12 DO YOU SEE THAT?

03:06PM 13 A. YES.

03:06PM 14 Q. AND YOU SAY, "TO CLARIFY:

03:06PM 15 "NUMBER 1, THIS IS NOT A QUESTION OF INTERPRETING RESULTS,

03:06PM 16 THIS IS A QUESTION OF THE RELIABILITY AND ACCURACY OF THE

03:06PM 17 RESULTS."

03:06PM 18 DO YOU SEE THAT?

03:06PM 19 A. YES.

03:06PM 20 Q. AND YOU THEN SAY, "THE MOST CONSTRUCTIVE THING AT THIS

03:06PM 21 POINT IS TO OFFER RELIABLE AND ROBUST ASSAYS, NOT TO SPIN."

03:06PM 22 DO YOU SEE THAT?

03:06PM 23 A. YES.

03:06PM 24 Q. AND WHICH OF THOSE DID YOU FEEL LIKE THERANOS WAS DOING AT

03:06PM 25 THE TIME THIS WAS HAPPENING?

03:06PM 1 A. I'M SORRY. COULD YOU SAY AGAIN?

03:06PM 2 Q. SURE. YOU'RE SETTING UP A DISTINCTION BETWEEN OFFERING

03:06PM 3 RELIABLE AND ROBUST ASSAYS AS OPPOSED TO SPINNING.

03:06PM 4 WHICH ONE OF THOSE DID YOU FEEL LIKE THERANOS WAS DOING

03:07PM 5 AROUND THIS TIME?

03:07PM 6 A. SPINNING.

03:07PM 7 Q. YOU SAY, "FURTHER, 100 PERCENT HONESTY AND TRANSPARENCY TO

03:07PM 8 THE PATIENT IS ESSENTIAL."

03:07PM 9 DO YOU SEE THAT?

03:07PM 10 A. YES, I DO.

03:07PM 11 Q. AND YOU SAY, "MY FIRST DUTY IS NOT TO THERANOS, BUT TO THE

03:07PM 12 PATIENT AS PER MY HIPPOCRATIC OATH," PRIMUM NON -- AND I WON'T

03:07PM 13 TRY TO PRONOUNCE THAT LATIN WORD.

03:07PM 14 DO YOU SEE THAT?

03:07PM 15 A. YES, I DO.

03:07PM 16 Q. AND FINALLY, YOU CLARIFY THAT YOU NEVER SAID THAT YOU

03:07PM 17 WOULDN'T TALK TO THE DOCTOR; IS THAT RIGHT?

03:07PM 18 A. YES.

03:07PM 19 Q. AND AFTER A RESPONSE ABOVE THAT FROM CHRISTIAN HOLMES, HE

03:07PM 20 AGAIN FORWARDS THE CHAIN TO ELIZABETH HOLMES AND SUNNY BALWANI

03:07PM 21 AT THE TOP OF THE PAGE.

03:07PM 22 DO YOU SEE THAT?

03:07PM 23 A. YES.

03:07PM 24 Q. AND CHRISTIAN HOLMES WRITES TO LET MS. HOLMES AND

03:07PM 25 MR. BALWANI KNOW, HE SAYS, "HIS RESPONSE TO THIS WAS TO DO A

03:07PM 1 VACUTAINER REDRAW AND I ENDED THE CONVERSATION AT THAT POINT."

03:08PM 2 DO YOU SEE THAT?

03:08PM 3 A. YES, I DO.

03:08PM 4 Q. AND WHEN IT SAYS, "HIS RESPONSE," IS THAT REFERRING TO

03:08PM 5 YOUR RESPONSE TO CHRISTIAN HOLMES?

03:08PM 6 A. YES, IT DOES.

03:08PM 7 Q. AND WHEN YOU SUGGESTED DOING A VACUTAINER REDRAW, WHAT DID

03:08PM 8 THAT MEAN AND WHY WOULD IT SOLVE THE PROBLEM IN YOUR MIND?

03:08PM 9 A. IT MEANS THAT THE CHOLESTEROL PANEL WOULD BE RUN ON THE

03:08PM 10 ADVIA FDA APPROVED PREDICATE INSTRUMENT, AVOIDING THE ACCURACY

03:08PM 11 PROBLEMS.

03:08PM 12 Q. AVOIDING THE ACCURACY PROBLEM BY NOT USING THERANOS

03:08PM 13 SPECIFIC TECHNOLOGY?

03:08PM 14 A. CORRECT.

03:08PM 15 Q. OKAY. WE CAN SET THAT ASIDE.

03:08PM 16 LET'S LOOK AT 4330, PLEASE.

03:08PM 17 AND AT 4330, DO YOU SEE AN EMAIL CHAIN INCLUDING YOU,

03:09PM 18 MR. BALWANI, AND MS. HOLMES RELATING TO YOUR CONCERNS ABOUT THE

03:09PM 19 COMPANY?

03:09PM 20 A. YES, I DO.

03:09PM 21 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4330.

03:09PM 22 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

03:09PM 23 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:09PM 24 (GOVERNMENT'S EXHIBIT 4330 WAS RECEIVED IN EVIDENCE.)

03:09PM 25 BY MR. BOSTIC:

03:09PM 1 Q. AND LET'S GO TO PAGE 3.

03:09PM 2 DO YOU SEE HERE, DR. ROSENDORFF, THAT YOU'RE EMAILING

03:09PM 3 MR. BALWANI AND CC'ING MS. HOLMES ON NOVEMBER 14TH, 2014,

03:09PM 4 ASKING ABOUT WHETHER THERANOS INTENDS TO TEST SAMPLES TO RULE

03:09PM 5 OUT OR DIAGNOSE EBOLA AT THE 7373 -- EXCUSE ME, AT THE 7373

03:09PM 6 GATEWAY ADDRESS?

03:09PM 7 A. YES, I DO.

03:09PM 8 Q. AND YOU SAY, IF THAT IS CORRECT, YOU ARE WONDERING WHY, AS

03:10PM 9 LAB DIRECTOR, YOU WERE NOT INVOLVED IN THE DECISION.

03:10PM 10 DO YOU SEE THAT?

03:10PM 11 A. YES, I DO.

03:10PM 12 Q. LET'S GO TO PAGE 2. MS. HOLMES DENIED THAT THAT WAS GOING

03:10PM 13 TO HAPPEN; CORRECT?

03:10PM 14 A. YES, SHE DOES.

03:10PM 15 Q. LET'S LOOK AT THE TOP OF PAGE 2 AND LOOK AT ANOTHER

03:10PM 16 MESSAGE FROM YOU.

03:10PM 17 THIS LEADS TO A MESSAGE FROM YOU THAT SAYS, "ELIZABETH,

03:10PM 18 "I FEEL REALLY UNCOMFORTABLE WITH WHAT IS HAPPENING RIGHT

03:10PM 19 NOW IN THIS COMPANY."

03:10PM 20 DO YOU SEE THAT?

03:10PM 21 A. YES.

03:10PM 22 Q. YOU SAY, "IS THERE ANY WAY YOU CAN GET SPENCER BACK ON THE

03:10PM 23 CLIA LICENSE AND TAKE ME OFF?"

03:10PM 24 A. YES.

03:10PM 25 Q. "I AM FEELING PRESSURED TO VOUCH FOR RESULTS THAT I CANNOT

03:10PM 1 BE CONFIDENT IN, AND ALSO IN A NUMBER OF CASES WHERE I GET
03:10PM 2 QUESTIONS ABOUT ASSAYS, I DO NOT KNOW WHAT METHOD IS BEING
03:10PM 3 USED, IE VACUTAINERS ALIQUOTTED INTO CTN'S, ET CETERA."

03:10PM 4 DO YOU SEE THAT?

03:10PM 5 A. YES.

03:10PM 6 Q. AND DID THIS BECOME -- DID YOUR MESSAGE REFER TO SOMETHING
03:11PM 7 BEYOND THE TESTING OF EBOLA?

03:11PM 8 A. YES. IT REALLY WENT TO MY SENSE THAT I WAS BEING LIED TO,
03:11PM 9 I WASN'T BEING KEPT IN THE LOOP, THAT I HAD NO WAY OF OPERATING
03:11PM 10 EFFICIENTLY AS LAB DIRECTOR IF I DIDN'T EVEN KNOW WHAT SAMPLE
03:11PM 11 WAS BEING PROCESSED, VENOUS VERSUS CAPILLARY.

03:11PM 12 IT WAS JUST IMPOSSIBLE TO FUNCTION IN THAT KIND OF
03:11PM 13 CULTURE.

03:11PM 14 Q. AND YOUR REQUEST TO GET SPENCER BACK ON THE CLIA LICENSE
03:11PM 15 AND TAKE YOU OFF, WHAT WOULD THAT MEAN IN TERMS OF YOUR ROLE
03:11PM 16 WITH THE COMPANY?

03:11PM 17 A. SINCE I HAD BEEN HIRED TO BE THE LABORATORY DIRECTOR, I
03:11PM 18 WOULD NOT BE THE LABORATORY DIRECTOR ANYMORE, YEAH.

03:11PM 19 Q. LET'S GO TO PAGE 1 AND LOOK AT MS. HOLMES'S RESPONSE.

03:12PM 20 SHE WRITES, "ADAM:

03:12PM 21 "HOW SAD AND DISAPPOINTING TO SEE THIS FROM YOU."

03:12PM 22 SHE WRITES, "OUTSIDE OF THE FACT YOU'VE NEVER EMAILED ME
03:12PM 23 ON ANY CONCERNS YOU ALLUDE TO THERE BEFORE BUT NOW EMAIL THIS,
03:12PM 24 YOU KNOW FROM EVERY CONVERSATION WE'VE EVER HAD TOGETHER HOW
03:12PM 25 FUNDAMENTAL IT IS TO ALL OF US FOR YOU OR ANY EMPLOYEE NEVER TO

03:12PM 1 DO ANYTHING YOU'RE NOT COMPLETELY CONFIDENT IN."

03:12PM 2 DO YOU SEE THAT?

03:12PM 3 A. YES, I DO.

03:12PM 4 Q. DID THOSE WORDS RING TRUE TO YOU FROM MS. HOLMES IN

03:12PM 5 NOVEMBER OF 2014?

03:12PM 6 A. NO, THEY DID NOT.

03:12PM 7 Q. WHY NOT?

03:12PM 8 A. IT FELT LIKE A, IT FELT LIKE THIS EMAIL HAD BEEN CRAFTED

03:12PM 9 BY HER LAWYERS.

03:12PM 10 I KNOW SO MANY INSTANCES WHERE EMPLOYEES WERE PRESSURED TO

03:12PM 11 DO THINGS THAT THEY WEREN'T COMFORTABLE DOING, INCLUDING

03:12PM 12 MYSELF, AND IT JUST SEEMED COMPLETELY DISINGENUOUS TO ME.

03:12PM 13 Q. AND BY THIS TIME IN NOVEMBER OF 2014, HAD YOU HAD

03:13PM 14 CONVERSATIONS AND COMMUNICATIONS WITH MS. HOLMES WHERE YOU HAD

03:13PM 15 RAISED YOUR CONCERNS ABOUT THINGS AT THE COMPANY?

03:13PM 16 A. YES.

03:13PM 17 Q. AND HAD YOU HAD SIMILAR CONVERSATIONS WITH MR. BALWANI?

03:13PM 18 A. YES.

03:13PM 19 Q. LET'S LOOK AT THE TOP OF PAGE 1.

03:13PM 20 DO YOU SEE THERE THAT MS. HOLMES FORWARDS THIS EMAIL CHAIN

03:13PM 21 TO MR. BALWANI?

03:13PM 22 A. YES, I SEE THAT.

03:13PM 23 Q. LET'S GO TO EXHIBIT 2228, PLEASE.

03:13PM 24 A. OKAY.

03:13PM 25 Q. OKAY. AND AT 2228, DO YOU SEE ANOTHER EMAIL EXCHANGE,

03:13PM 1 INCLUDING MR. BALWANI AND YOURSELF, LEADING UP TO THE END OF
03:13PM 2 YOUR TIME AT THE COMPANY?

03:13PM 3 A. YES, I DO.

03:13PM 4 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2228.

03:14PM 5 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

03:14PM 6 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:14PM 7 (GOVERNMENT'S EXHIBIT 2228 WAS RECEIVED IN EVIDENCE.)

03:14PM 8 BY MR. BOSTIC:

03:14PM 9 Q. OKAY. LET'S START AT THE BOTTOM OF PAGE 2.

03:14PM 10 AND DO YOU SEE HERE THIS IS AN EMAIL DISCUSSING A REDRAW?

03:14PM 11 A. YES.

03:14PM 12 Q. AND IT SAYS, "THE CHLORIDE WAS CRITICAL HIGH AND THE

03:14PM 13 COLLECTED CTN WAS QNS FOR RERUN."

03:14PM 14 DO YOU SEE THAT?

03:14PM 15 A. YES.

03:14PM 16 Q. AND WHAT DOES "QNS FOR RERUN" MEAN?

03:14PM 17 A. IT MEANS THERE WASN'T ENOUGH TO RUN IT AGAIN.

03:14PM 18 Q. SO, IN OTHER WORDS, THERE WAS A PROBLEM WITH THE TEST AND

03:14PM 19 THERE WAS NOT ENOUGH SAMPLE TO TEST IT AGAIN?

03:14PM 20 A. CORRECT.

03:14PM 21 Q. LET'S LOOK AT THE TOP OF PAGE 2 AT THE MESSAGE FROM YOU TO

03:14PM 22 MS. HOLMES AND MR. BALWANI.

03:14PM 23 AND YOU WRITE, "ELIZABETH/SUNNY,

03:14PM 24 "WE ARE STILL VOIDING CRITICAL ISE RESULTS AND ASKING FOR

03:14PM 25 REDRAW. THIS MEANS WE WOULD MISS A TRULY CRITICAL ISE RESULT.

03:15PM 1 BY THE SAME TOKEN IT CALLS INTO QUESTION THE ACCURACY OF EVEN
03:15PM 2 THE NORMAL ISE RESULTS."

03:15PM 3 DO YOU SEE THAT?

03:15PM 4 A. YES, I DO.

03:15PM 5 Q. AND YOU ASK THEM, "ARE YOU BOTH COMFORTABLE WITH THIS?"
03:15PM 6 IS THAT RIGHT?

03:15PM 7 A. YES.

03:15PM 8 Q. AND THIS PRACTICE OF VOIDING CRITICAL ISE RESULTS, WOULD
03:15PM 9 THAT HAVE BEEN NECESSARY IN YOUR VIEW HAD THERANOS NOT HAD
03:15PM 10 ACCURACY PROBLEMS WITH ITS ISE TESTS?

03:15PM 11 A. NO, IT WOULD NOT HAVE BEEN NECESSARY.

03:15PM 12 Q. LET'S GO TO PAGE 1 AND LOOK AT MR. BALWANI'S RESPONSE.
03:15PM 13 AT THE BOTTOM OF THE PAGE THERE HE SAYS, "ADAM. SEE
03:15PM 14 ATTACHED.

03:15PM 15 "MICHAEL JUMPED THE GUN IN REQUESTING THIS REDRAW. AND SO
03:15PM 16 DID YOU IN JUMPING TO CONCLUSION WITHOUT UNDERSTANDING THE
03:15PM 17 PROCESS."

03:15PM 18 AND HE SAYS, "WE HAVE VERY HIGH CONFIDENCE IN EVERY RESULT
03:15PM 19 WE ARE RELEASING."

03:15PM 20 DO YOU SEE THAT LANGUAGE?

03:15PM 21 A. YES.

03:15PM 22 Q. AT THIS TIME, AS THERANOS LABORATORY DIRECTOR, DID YOU
03:15PM 23 HAVE VERY HIGH CONFIDENCE IN EVERY RESULT THE LAB WAS
03:16PM 24 RELEASING?

03:16PM 25 A. NO, I DID NOT.

03:16PM 1 Q. LET'S SEE YOUR RESPONSE. LET'S GO ONE EMAIL UP.

03:16PM 2 AND YOU SENT AN EMAIL TO ELIZABETH HOLMES INDIVIDUALLY.

03:16PM 3 DO YOU SEE THAT?

03:16PM 4 A. YES, I DO.

03:16PM 5 Q. AND YOU SAY, "ELIZABETH,

03:16PM 6 "I FIND SUNNY'S RESPONSE OFFENSIVE AND DISINGENUOUS.

03:16PM 7 "HE SHOULD APOLOGIZE."

03:16PM 8 DO YOU SEE THAT REQUEST?

03:16PM 9 A. YES, I DO.

03:16PM 10 Q. AND LET'S LOOK AT THE TOP PORTION OF THIS PAGE.

03:16PM 11 AND DO YOU SEE THAT MS. HOLMES FORWARDS THIS WITHOUT

03:16PM 12 COMMENT TO MR. BALWANI?

03:16PM 13 A. YES.

03:16PM 14 Q. AND HIS RESPONSE IS, "WE NEED TO RESPOND TO HIM NOW AND

03:16PM 15 CUT HIM MONDAY."

03:16PM 16 DO YOU SEE THAT?

03:16PM 17 A. YES.

03:16PM 18 Q. WHEN I ASKED YOU EARLIER WHAT THE CIRCUMSTANCES WERE OF

03:16PM 19 YOUR LEAVING THE COMPANY, YOU STATED THAT YOU QUIT; IS THAT

03:16PM 20 CORRECT?

03:16PM 21 A. YES.

03:16PM 22 Q. DID MR. BALWANI OR MS. HOLMES EVER TERMINATE YOUR

03:16PM 23 EMPLOYMENT?

03:16PM 24 A. NO, NOT TO MY KNOWLEDGE, NO.

03:17PM 25 Q. OKAY. AROUND THIS TIME, DID YOU MAKE THE DECISION TO END

03:17PM 1 YOUR EMPLOYMENT WITH THE COMPANY?

03:17PM 2 A. I AGREED WITH SUNNY TO SHOW UP TO THE THERANOS OFFICES,
03:17PM 3 THE NEW OFFICES IN PALO ALTO TO ESSENTIALLY SIGN DOCUMENTS THAT
03:17PM 4 WOULD TAKE ME OFF THE LICENSE.

03:17PM 5 Q. OKAY.

03:17PM 6 A. SO I SHOWED UP AT THE TIME I SAID I WOULD.

03:17PM 7 Q. OKAY. UNDERSTOOD.

03:17PM 8 A. YEAH.

03:17PM 9 Q. WE CAN TAKE THAT DOWN.

03:17PM 10 YOUR HONOR, I WOULD LIKE TO SHOW PORTIONS OF 5387H, WHICH
03:17PM 11 IS ALREADY IN EVIDENCE?

03:17PM 12 THE COURT: YES.

03:17PM 13 BY MR. BOSTIC:

03:17PM 14 Q. AND LET'S GO TO PAGE 30 OF THAT EXHIBIT, MS. WACHS.

03:18PM 15 AND IF WE CAN ZOOM IN ON THAT CONTENT.

03:18PM 16 DR. ROSENDORFF, DO YOU SEE ON THE SCREEN IN FRONT OF YOU
03:18PM 17 TEXT MESSAGES BETWEEN MS. HOLMES AND MR. BALWANI IN NOVEMBER OF
03:18PM 18 2014?

03:18PM 19 A. YES, I DO.

03:18PM 20 Q. AND THIS IS AROUND THE TIME OF THE CONVERSATION THAT WE
03:18PM 21 WERE JUST LOOKING AT; CORRECT?

03:18PM 22 A. YES, IT IS.

03:18PM 23 Q. AND AROUND THE TIME THAT YOU WERE DECIDING TO LEAVE THE
03:18PM 24 COMPANY?

03:18PM 25 A. I HAD ALREADY GIVEN NOTICE TWO MONTHS PRIOR.

03:18PM 1 Q. OKAY. UNDERSTOOD.

03:18PM 2 THIS WAS THE TIME OF YOUR ACTUAL DEPARTURE?

03:18PM 3 A. CORRECT. CORRECT.

03:18PM 4 Q. DO YOU SEE THAT MS. HOLMES AND MR. BALWANI ARE TEXTING.

03:18PM 5 FOR EXAMPLE, MS. HOLMES SAYS, "JUST FINISHED CALLS.

03:18PM 6 ALICE WALTON IN FOR 50. CONFIRMED 100 GREG."

03:18PM 7 DO YOU SEE THAT?

03:18PM 8 A. YES, I DO.

03:18PM 9 Q. MR. BALWANI SAYS, "AWESOME. I WAS THINKING TODAY. THEY

03:18PM 10 ARE NOT INVESTING IN OUR COMPANY THEY ARE INVESTING IN OUR

03:18PM 11 DESTINY."

03:18PM 12 DO YOU SEE THAT?

03:18PM 13 A. YES.

03:18PM 14 Q. AND THERE'S A DISCUSSION OF THE TOTAL AMOUNT BEING 100 OR

03:18PM 15 150.

03:18PM 16 DO YOU SEE THAT?

03:18PM 17 A. YES.

03:18PM 18 Q. AND IT SAYS, "RUPERT OVER 100."

03:19PM 19 DO YOU SEE THAT?

03:19PM 20 A. YES.

03:19PM 21 Q. AND WERE YOU AWARE DURING THE TIME THAT YOU WERE

03:19PM 22 DISCUSSING YOUR CONCERNS WITH MR. BALWANI AND MS. HOLMES THAT

03:19PM 23 THEY WERE RAISING TENS OF MILLIONS OF DOLLARS FROM INVESTORS?

03:19PM 24 A. I WAS NOT.

03:19PM 25 Q. LET'S LOOK AT PAGE 35 OF THIS EXHIBIT.

03:19PM 1 AND DO YOU SEE ON THE SCREEN NOW TEXT MESSAGES BETWEEN

03:19PM 2 MR. BALWANI AND MS. HOLMES FROM LATE DECEMBER 2014?

03:19PM 3 A. YES, I SEE.

03:19PM 4 Q. WAS THIS AFTER YOUR DEPARTURE FROM THE COMPANY?

03:19PM 5 A. YES, IT IS.

03:19PM 6 Q. MS. HOLMES SENDS THE TEXT AT THE TOP THAT SAYS, "THIS YEAR

03:19PM 7 IS OUR YEAR."

03:19PM 8 DO YOU SEE THAT?

03:19PM 9 A. YES.

03:19PM 10 Q. AND SHE SAYS, "WE CAN NEVER FORGET THIS TIGER."

03:19PM 11 MR. BALWANI SAYS, "I KNOW. I AM FOCUSSED ON IT.

03:19PM 12 "WE WILL EXECUTE THIS YEAR."

03:19PM 13 DO YOU SEE THAT?

03:19PM 14 A. YES, I DO.

03:19PM 15 Q. MS. HOLMES SAYS, "I KNOW. I'M FOCUSSED ON TOO.

03:20PM 16 "AND FOR OUR KIDS NEVER FORGET WHO WE ARE."

03:20PM 17 DO YOU SEE THAT?

03:20PM 18 A. YES.

03:20PM 19 Q. AND MR. BALWANI'S COMMENT, "WE WILL EXECUTE THIS YEAR," DO

03:20PM 20 YOU REMEMBER WHEN THERANOS BEGAN OFFERING ITS TESTS TO

03:20PM 21 PATIENTS?

03:20PM 22 A. EARLY SEPTEMBER 2013.

03:20PM 23 Q. WE CAN TAKE THAT DOWN. THANK YOU, MS. WACHS.

03:20PM 24 DR. ROSENDORFF, YOUR DECISION TO LEAVE THE COMPANY, DID

03:20PM 25 YOU MAKE IT LIGHTLY?

03:20PM 1 A. NO, I DID NOT.

03:20PM 2 Q. WHEN YOU INITIALLY JOINED THE COMPANY, YOU MENTIONED THAT
03:20PM 3 YOU WERE EXCITED ABOUT WORKING THERE; IS THAT CORRECT?

03:20PM 4 A. YES.

03:20PM 5 Q. AT A HIGH LEVEL, GENERALLY SPEAKING, WHAT MOTIVATED YOU TO
03:20PM 6 TURN YOUR BACK ON THAT AND TO LEAVE THE COMPANY IN LATE 2014?

03:20PM 7 A. I BECAME PROGRESSIVELY DISILLUSIONED AND CAME TO REALIZE
03:20PM 8 THAT THE COMPANY REALLY DIDN'T HAVE ANY GROUNDBREAKING
03:20PM 9 TECHNOLOGY THAT WAS BEING USED FOR PATIENT TESTING.

03:21PM 10 I WAS ALSO INCREDIBLY UNCOMFORTABLE WITH MY CONNECTION
03:21PM 11 WITH THE COMPANY AS A PHYSICIAN, AND ESSENTIALLY MALPRACTICE I
03:21PM 12 FELT THAT WAS BEING COMMITTED AT THE COMPANY.

03:21PM 13 IT WAS MY FIRST CORPORATE JOB OUT OF ACADEMIA. I DIDN'T
03:21PM 14 KNOW HOW COMPANIES WERE SUPPOSED TO FUNCTION, BUT I SETTLED
03:21PM 15 WITH MY -- IT WAS A MORALE ISSUE FOR ME, AN ETHICAL ISSUE, AND
03:21PM 16 I DECIDED TO LEAVE.

03:21PM 17 Q. THANK YOU, DR. ROSENDORFF.

03:21PM 18 NO FURTHER QUESTIONS AT THIS TIME.

03:21PM 19 THE COURT: CROSS-EXAMINATION?

03:21PM 20 MR. COOPERSMITH: THANK YOU, YOUR HONOR. JUST A
03:21PM 21 MOMENT TO SET UP.

03:21PM 22 THE COURT: SURE.

03:21PM 23 MR. COOPERSMITH: THANK YOU.

03:21PM 24 THE COURT: FOLKS, YOU CAN STAND AND STRETCH IF YOU
03:21PM 25 WOULD LIKE WHILE THINGS GET ORGANIZED.

03:23PM 1 (STRETCHING.)

03:23PM 2 (PAUSE IN PROCEEDINGS.)

03:23PM 3 THE COURT: OKAY. THANK YOU.

03:23PM 4 MR. COOPERSMITH: YOUR HONOR, MAY I APPROACH?

03:23PM 5 THE COURT: YES.

03:23PM 6 MR. COOPERSMITH: (HANDING.)

03:23PM 7 (PAUSE IN PROCEEDINGS.)

03:24PM 8 MR. COOPERSMITH: AND MAY I APPROACH AGAIN,

03:24PM 9 YOUR HONOR?

03:24PM 10 (HANDING.)

03:24PM 11 THE WITNESS: THANKS.

03:24PM 12 THE COURT: MR. COOPERSMITH.

03:24PM 13 MR. COOPERSMITH: THANK YOU, YOUR HONOR. AND THANK

03:24PM 14 YOU FOR THE COURT'S INDULGENCE WHILE I ASSEMBLED THE DIFFERENT

03:25PM 15 BINDERS. I APPRECIATE THAT.

03:25PM 16 THE COURT: OF COURSE.

03:25PM 17 **CROSS-EXAMINATION**

03:25PM 18 BY MR. COOPERSMITH:

03:25PM 19 Q. DR. ROSENDORFF, GOOD AFTERNOON. I'M JEFF COOPERSMITH AND

03:25PM 20 I REPRESENT SUNNY BALWANI.

03:25PM 21 A. GOOD AFTERNOON.

03:25PM 22 Q. AND I'LL BE ASKING YOU QUESTIONS FOR THE COURSE OF THE

03:25PM 23 DAY, AND THEN I THINK WE'LL PROBABLY BE CONTINUING ON FRIDAY.

03:25PM 24 OKAY?

03:25PM 25 A. YEAH.

03:25PM 1 Q. OKAY. SO LET'S JUST START FROM THE BEGINNING.

03:25PM 2 I THINK YOU SAID ON DIRECT THAT YOU HAD BEEN INTERESTED IN

03:25PM 3 A JOB IN SILICON VALLEY?

03:25PM 4 A. YES.

03:25PM 5 Q. AND THAT YOU HAD FOUND THERANOS THROUGH A POST ON LINKEDIN

03:25PM 6 I THINK YOU SAID?

03:25PM 7 A. YES.

03:25PM 8 Q. AND THEN YOU CAME OUT TO THE BAY AREA TO DO AN INTERVIEW?

03:25PM 9 A. YES.

03:25PM 10 Q. AND I THINK YOU SAID THE INTERVIEW WAS AT 6:00 P.M.?

03:25PM 11 A. IT WAS IN, IT WAS IN THE EARLY EVENING, YES.

03:25PM 12 Q. AND WAS YOUR INTERVIEWING CONTINUING TO THE NEXT DAY, OR

03:25PM 13 WAS THAT IT? YOU HAD AN EVENING INTERVIEW?

03:25PM 14 A. THAT WAS IT.

03:25PM 15 Q. AND HOW LATE INTO THE EVENING DID YOU STAY AT THERANOS FOR

03:25PM 16 THE INTERVIEW?

03:25PM 17 A. I DON'T RECALL.

03:25PM 18 Q. OKAY. BUT YOU BELIEVED AT THE TIME THAT THE HOUR OF THE

03:26PM 19 INTERVIEW WAS A REFLECTION OF THE DEDICATION OF THE PEOPLE WHO

03:26PM 20 WORKED AT THERANOS?

03:26PM 21 A. YES. I WAS THINKING POSITIVELY, YES.

03:26PM 22 Q. OKAY. AND THEN I THINK YOU SAID ALSO THAT BEFORE YOU

03:26PM 23 JOINED THE COMPANY, YOU HAD DONE SOME OF YOUR OWN RESEARCH,

03:26PM 24 SUCH AS YOU COULD, ON THE INTERNET AND SO FORTH?

03:26PM 25 A. YES.

03:26PM 1 Q. AND YOU FOUND THAT THE COMPANY HAD OBTAINED PATENTS FOR A
03:26PM 2 NUMBER OF INVENTIONS THAT THE COMPANY HAD?

03:26PM 3 A. YES.

03:26PM 4 Q. AND THAT GAVE YOU CONFIDENCE IN JOINING THE COMPANY?

03:26PM 5 A. YES.

03:26PM 6 Q. OKAY. NOW, WHEN YOU FIRST JOINED, IT WAS IN APRIL OF
03:26PM 7 2013; IS THAT CORRECT?

03:26PM 8 A. I BELIEVE SO.

03:26PM 9 Q. AND AT THAT POINT THE COMPANY WAS NOT CONDUCTING PATIENT
03:26PM 10 TESTING AT -- THROUGH THE WALGREENS PROGRAM?

03:26PM 11 A. CORRECT.

03:26PM 12 Q. BUT I THINK YOU SAID THAT THEY WERE CONDUCTING SOME
03:26PM 13 TESTING FOR EMPLOYEES OF SAFEWAY; IS THAT RIGHT?

03:26PM 14 A. CORRECT.

03:26PM 15 Q. AND THE SAFEWAY EMPLOYEES TESTING, THAT WAS THROUGH FDA
03:27PM 16 APPROVED PREDICATE DEVICES; IS THAT RIGHT?

03:27PM 17 A. YES.

03:27PM 18 Q. OKAY. WAS THERE A LAB DIRECTOR THERE WHEN YOU FIRST
03:27PM 19 JOINED THERANOS?

03:27PM 20 A. THE PREVIOUS LAB DIRECTOR, ARNE GELB, HAD QUIT IN DISGUST,
03:27PM 21 AND THERE WAS A PART-TIME INTERIM LAB DIRECTOR, SPENCER HIRAKI,
03:27PM 22 AT THAT TIME. HE WAS THE LAB DIRECTOR AS I RECALL AT THAT
03:27PM 23 TIME.

03:27PM 24 Q. SO THE LAB DIRECTOR ON THE CLIA LICENSE AT THE TIME THAT
03:27PM 25 YOU JOINED THERANOS WAS SPENCER HIRAKI?

03:27PM 1 A. CORRECT.

03:27PM 2 Q. AND DR. GELB, I THINK YOU SAID HE QUIT?

03:27PM 3 A. CORRECT.

03:27PM 4 Q. BUT YOU NONETHELESS STAYED ON AT THERANOS?

03:27PM 5 A. I DIDN'T KNOW THE CIRCUMSTANCES OF HIS DEPARTURE WHEN I

03:27PM 6 JOINED.

03:27PM 7 Q. OKAY. BUT THEN AFTER YOU JOINED, YOU LEARNED SOMETHING

03:27PM 8 ABOUT DR. GELB?

03:27PM 9 A. AT SOME POINT, YES.

03:27PM 10 Q. AND THEN YOU STAYED ON NONETHELESS?

03:28PM 11 A. YES.

03:28PM 12 Q. OKAY. SO IN ORDER TO RUN A CLINICAL LAB, THERE NEEDS TO

03:28PM 13 BE A CERTIFICATION FROM, OR A LICENSE RATHER FROM CMS; IS THAT

03:28PM 14 CORRECT?

03:28PM 15 A. CORRECT.

03:28PM 16 Q. AND CMS IS THE CENTER FOR MEDICARE AND MEDICAID SERVICES?

03:28PM 17 A. CORRECT.

03:28PM 18 Q. AND ONE OF THE RESPONSIBILITIES OF THAT GOVERNMENT AGENCY

03:28PM 19 IS TO REGULATE CLINICAL LABS IN THE UNITED STATES?

03:28PM 20 A. CORRECT.

03:28PM 21 Q. AND TO, IN SOME CASES, INSPECT LABS?

03:28PM 22 A. CORRECT.

03:28PM 23 Q. AND SOMETIMES THEY USE STATE PARTNERS TO ALSO DO

03:28PM 24 INSPECTIONS OF LABS; IS THAT RIGHT?

03:28PM 25 A. USUALLY THEY USE STATE PARTNERS, YES.

03:28PM 1 Q. AND ONE SUCH STATE DEPARTMENT WOULD BE THE CALIFORNIA
03:28PM 2 DEPARTMENT OF HEALTH LABORATORY FIELD SERVICES?

03:28PM 3 A. CORRECT.

03:28PM 4 Q. OKAY. AND IN ADDITION TO DOING THAT, YOU WERE AWARE THAT
03:28PM 5 CMS ALSO ISSUES REGULATIONS THAT GOVERN THE OPERATION OF
03:28PM 6 CLINICAL LABS; IS THAT RIGHT?

03:28PM 7 A. YES.

03:28PM 8 Q. AND YOU, AS A LAB DIRECTOR, ONCE YOU WERE A LAB DIRECTOR,
03:28PM 9 YOU WERE BOUND BY THOSE REGULATIONS?

03:28PM 10 A. YES, AS IS THE OPERATOR OF THE LABORATORY.

03:29PM 11 Q. RIGHT. WE'LL TALK ABOUT THAT IN A MINUTE.

03:29PM 12 NOW, I WANT TO JUST SHOW YOU AN EXHIBIT, WHICH I KNOW IT'S
03:29PM 13 GOING TO BE A LITTLE BIT DIFFICULT TO FIND IN THE NUMEROUS
03:29PM 14 BINDERS I'VE GIVEN YOU, BUT IF YOU COULD TRY TO FIND 20304.

03:29PM 15 THE COURT: ANY IDEA WHAT BINDER IT WOULD BE IN?

03:29PM 16 MR. COOPERSMITH: IT SHOULD BE IN THE SECOND OF THE
03:29PM 17 TWO EXHIBIT BINDERS, YOUR HONOR.

03:29PM 18 AND THE SAME FOR DR. ROSENDORFF.

03:30PM 19 THE WITNESS: I HAVE IT.

03:30PM 20 BY MR. COOPERSMITH:

03:30PM 21 Q. OKAY. AND DO YOU SEE THAT EXHIBIT 20304 IS AN EMAIL
03:30PM 22 STRING FROM AROUND NOVEMBER 18TH OR 19TH OF 2013?

03:30PM 23 A. YES.

03:30PM 24 Q. AND THIS RELATES TO HIRING A CERTAIN GENTLEMAN NAMED
03:30PM 25 LANGLEY GEE; IS THAT CORRECT?

03:30PM 1 A. YES.

03:30PM 2 Q. OKAY. AND YOU SEE YOUR OWN NAME ON THE EMAIL STRING?

03:30PM 3 A. YES.

03:30PM 4 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20304.

03:30PM 5 MR. BOSTIC: HEARSAY.

03:30PM 6 THE COURT: DO YOU WANT TO -- THE OBJECTION IS

03:30PM 7 HEARSAY.

03:30PM 8 DO YOU WANT TO LAY A FOUNDATION?

03:30PM 9 MR. COOPERSMITH: IF THE COURT REQUIRES, YES.

03:30PM 10 THE COURT: I THINK WE'VE BEEN DOING THAT.

03:30PM 11 MR. COOPERSMITH: OKAY.

03:30PM 12 Q. DR. ROSENDORFF, WHILE YOU WERE AT THERANOS, DID YOU

03:31PM 13 COMMUNICATE WITH OTHER PEOPLE AT THERANOS THROUGH EMAIL?

03:31PM 14 A. YES, I DID.

03:31PM 15 Q. AND DID YOU SEND AND RECEIVE A LOT OF EMAILS WHEN YOU WERE

03:31PM 16 AT THERANOS?

03:31PM 17 A. YES, I DID.

03:31PM 18 Q. AND WAS THAT, IN FACT, A PRIMARY MEANS OF COMMUNICATION?

03:31PM 19 A. YES, IT WAS.

03:31PM 20 Q. AND WHEN YOU COMMUNICATED INFORMATION TO PEOPLE, INCLUDING

03:31PM 21 THE RECRUITING DEPARTMENT AT THERANOS, WERE YOU TRYING TO BE AS

03:31PM 22 ACCURATE AS POSSIBLE?

03:31PM 23 A. YES.

03:31PM 24 Q. AND WAS IT NECESSARY TO BE ACCURATE SO THAT THE COMPANY

03:31PM 25 HAD ACCURATE INFORMATION ABOUT WHO WAS BEING HIRED AND WHAT THE

03:31PM 1 RECRUITING SITUATION WAS?

03:31PM 2 A. YES.

03:31PM 3 Q. AND DID YOU -- WERE THESE EMAILS RETAINED AT THERANOS SO
03:31PM 4 THAT PEOPLE COULD REFER BACK TO THEM IF THAT WAS EVER
03:31PM 5 NECESSARY?

03:31PM 6 A. YES.

03:31PM 7 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20304.

03:31PM 8 THE COURT: AS A BUSINESS RECORD?

03:31PM 9 MR. COOPERSMITH: YES, YOUR HONOR.

03:31PM 10 THE COURT: ALL RIGHT. IT'S ADMITTED UNDER 803(6).
03:31PM 11 THANK YOU.

03:31PM 12 (DEFENDANT'S EXHIBIT 20304 WAS RECEIVED IN EVIDENCE.)

03:31PM 13 BY MR. COOPERSMITH:

03:31PM 14 Q. OKAY. LET'S GO TO THE SECOND AND THIRD PAGES. I THINK
03:32PM 15 THAT'S THE EARLIEST IN TIME EMAIL, DR. ROSENDORFF.

03:32PM 16 A. OKAY.

03:32PM 17 Q. AND THIS IS AN EMAIL FROM STEPHANIE POLIS.

03:32PM 18 DO YOU SEE THAT?

03:32PM 19 A. YES.

03:32PM 20 Q. AND IT'S TO A NUMBER OF PEOPLE, INCLUDING YOURSELF, AND
03:32PM 21 DR. YOUNG AND OTHERS.

03:32PM 22 DO YOU SEE THAT?

03:32PM 23 A. YES.

03:32PM 24 Q. AND THE SUBJECT IS AN INTERVIEW OF LAGLEY GEE?

03:32PM 25 A. YES.

03:32PM 1 Q. AND THEN IT SAYS CLIA QA/QC MANAGER OR LABORATORY GENERAL
03:32PM 2 SUPERVISOR.

03:32PM 3 DO YOU SEE THAT?

03:32PM 4 A. YES.

03:32PM 5 Q. AND SO AT THIS TIME, WAS MR. GEE BEING CONSIDERED FOR ONE
03:32PM 6 OF THOSE POSITIONS, EITHER QA/QC MANAGER OR LABORATORY GENERAL
03:32PM 7 SUPERVISOR?

03:32PM 8 A. I RECALL THAT THE QA/QC PART. I DON'T INDEPENDENTLY
03:32PM 9 RECALL THE LAB GENERAL SUPERVISOR PART.

03:32PM 10 Q. OKAY. YOU REMEMBER THAT HE WAS BEING CONSIDERED FOR THE
03:32PM 11 QA/QC MANAGER POSITION?

03:32PM 12 A. YES.

03:32PM 13 Q. AND IS THAT QUALITY ASSURANCE, QUALITY CONTROL?

03:32PM 14 A. YES.

03:32PM 15 Q. AND SO IS THE IDEA THAT HE WOULD BE HIRED TO SUPERVISE
03:33PM 16 THAT PROCESS AT THERANOS, THE QUALITY CONTROL AND QUALITY
03:33PM 17 ASSURANCE?

03:33PM 18 A. YES.

03:33PM 19 Q. OKAY. AND THEN YOU -- IT LOOKS LIKE, IF YOU GO TO THE
03:33PM 20 BOTTOM OF PAGE 2 AND THEN ON TO PAGE 3, THESE ARE YOUR COMMENTS
03:33PM 21 ABOUT MR. GEE AFTER YOU INTERVIEWED HIM; IS THAT RIGHT?

03:33PM 22 A. YES.

03:33PM 23 Q. AND YOU WROTE, "WELL SPOKEN, INTELLIGENT, TONS OF QA/QC
03:33PM 24 EXPERIENCE AT TETHYS, WHERE HE HAS BEEN ENSURING CLIA
03:33PM 25 COMPLIANCE FOR THE LAST YEAR - COMPANY IS CLOSING."

03:33PM 1 DO YOU SEE THAT?

03:33PM 2 A. YES.

03:33PM 3 Q. AND YOU WROTE THOSE WORDS, SIR?

03:33PM 4 A. YES.

03:33PM 5 Q. AND THEN IT GOES ON TO SAY, "EXPERIENCE WITH CAP
03:33PM 6 INSPECTIONS, I.T., DOCUMENT CONTROL, AND NEW YORK STATE AND
03:33PM 7 CLIA COMPLIANCE, AND CAPA DOCUMENTATION."

03:33PM 8 DO YOU SEE THAT?

03:33PM 9 A. YES.

03:33PM 10 Q. AND THEN IT GOES ON, "HAS EXPERIENCE WITH PROTOCOLS
03:33PM 11 DEALING WITH WHOLE BLOOD DILUTION FOR A TEST PANEL TO PREDICT
03:34PM 12 DIABETES RISK."

03:34PM 13 DO YOU SEE THAT?

03:34PM 14 A. YES.

03:34PM 15 Q. AND YOU THOUGHT THOSE WERE POSITIVE ATTRIBUTES FOR SOMEONE
03:34PM 16 WHO WAS BEING CONSIDERED AS THE QA/QC MANAGER?

03:34PM 17 A. I THOUGHT THEY WERE RELEVANT TO THE JOB, YES.

03:34PM 18 Q. AND THEN IT SAYS, "PRIOR TO THIS HE WAS AT BIORAD FOR OVER
03:34PM 19 10 YEARS WITH EXPERIENCE IN MANUFACTURING, MEETING ISO
03:34PM 20 STANDARDS AND GMP."

03:34PM 21 DO YOU SEE THAT?

03:34PM 22 A. YES.

03:34PM 23 Q. AND GMP MEANS GOOD MANUFACTURING PRACTICES?

03:34PM 24 A. YES.

03:34PM 25 Q. AND THAT'S A SYSTEM OF QUALITY FOR MANUFACTURING AS

03:34PM 1 OPPOSED TO LABORATORY TESTING; IS THAT RIGHT?

03:34PM 2 A. PARDON ME?

03:34PM 3 Q. I'M SORRY. GMP, GOOD MANUFACTURING PRACTICE, THAT'S A

03:34PM 4 SYSTEM OF QUALITY FOR MANUFACTURING; IS THAT RIGHT?

03:34PM 5 A. CORRECT.

03:34PM 6 Q. AND THEN IT SAYS -- OH, AND BIORAD, THAT'S THE SAME

03:34PM 7 COMPANY THAT MADE THE QUALITY CONTROL MATERIAL THAT THERANOS

03:34PM 8 USED; IS THAT RIGHT?

03:34PM 9 A. CORRECT.

03:34PM 10 Q. AND THEN THE QUESTION IS, "DO YOU THINK WE SHOULD HIRE

03:35PM 11 THIS CANDIDATE?"

03:35PM 12 AND YOU WROTE YES; IS THAT CORRECT?

03:35PM 13 A. YES.

03:35PM 14 Q. SO YOU SUPPORTED HIRING MR. GEE?

03:35PM 15 A. YES.

03:35PM 16 Q. AND THE COMPANY IN GENERAL SUPPORTED HIRING MR. GEE?

03:35PM 17 A. YES.

03:35PM 18 Q. AND MR. BALWANI SUPPORTED HIRING MR. GEE?

03:35PM 19 A. I ASSUME SO.

03:35PM 20 Q. AND THEN IF YOU GO TO PAGE 1, AND THEN IT GOES ON TO

03:35PM 21 PAGE 2, AND YOU WROTE EXCELLENT CANDIDATE.

03:35PM 22 DO YOU SEE THAT?

03:35PM 23 A. YES.

03:35PM 24 Q. AND THEN I WON'T READ THE PART ON TOP OF PAGE 2, BUT IT'S

03:35PM 25 BASICALLY THE SAME SENTIMENT THAT YOU EXPRESSED IN YOUR

03:35PM 1 INTERVIEW COMMENTS; IS THAT RIGHT?

03:35PM 2 A. YES.

03:35PM 3 Q. AND THEN IF WE CAN PUT PAGE 2 ON THE TOP ON THE SCREEN SO

03:35PM 4 THE JURY CAN SEE THAT.

03:35PM 5 OKAY. LEAVE THAT UP FOR A MINUTE.

03:35PM 6 OKAY. GOING TO THE FIRST PAGE, DR. ROSENDORFF, THEN

03:36PM 7 LEANNE PELUFFO --

03:36PM 8 DO YOU SEE THAT?

03:36PM 9 A. YES.

03:36PM 10 Q. -- WHO WAS A RECRUITING COORDINATOR AT THERANOS?

03:36PM 11 A. YES.

03:36PM 12 Q. AND SHE WROTE, "THANK YOU FOR THE FEEDBACK, ADAM. WOULD

03:36PM 13 YOU SAY HE IS BETTER FIT FOR THE CLIA QA/QC MANAGER OR LAB

03:36PM 14 GENERAL SUPERVISOR?"

03:36PM 15 RIGHT?

03:36PM 16 A. YES.

03:36PM 17 Q. AND YOU WROTE, "PROBABLY A BETTER QA/QC BUT WOULD MAKE AN

03:36PM 18 EXCELLENT GS," OR GENERAL SUPERVISOR, "AS WELL."

03:36PM 19 DO YOU SEE THAT?

03:36PM 20 A. I SEE THAT.

03:36PM 21 Q. THAT WAS YOUR VIEW OF MR. GEE AT THE TIME?

03:36PM 22 A. I DON'T HAVE AN INDEPENDENT RECOLLECTION OTHER THAN WHAT

03:36PM 23 I'M READING IN FRONT OF ME, SIR.

03:36PM 24 Q. BUT WHEN YOU WROTE THOSE WORDS, YOU WERE TRYING TO BE

03:36PM 25 ACCURATE AND CORRECT AT THE TIME; IS THAT RIGHT?

03:36PM 1 A. YES.

03:36PM 2 Q. OKAY. SO YOU BELIEVED MR. GEE WOULD BE HELPFUL TO YOU TO

03:36PM 3 HELP SUPERVISE THE QUALITY CONTROL AREA OF THE COMPANY?

03:36PM 4 A. YES.

03:36PM 5 Q. AND HE FROM TIME TO TIME PERFORMED QUALITY CONTROL TASKS,

03:36PM 6 IN FACT, HE SUPERVISED THOSE TASKS; IS THAT RIGHT.

03:36PM 7 A. NO, I DON'T THINK THAT'S ACCURATE.

03:36PM 8 Q. WELL, YOU RELIED ON MR. GEE TO WORK ON QUALITY CONTROL

03:37PM 9 ISSUES AT THERANOS?

03:37PM 10 A. HE RECORDED THE QUALITY CONTROL PERFORMANCE.

03:37PM 11 Q. THANK YOU, DR. ROSENDORFF.

03:37PM 12 AND FROM TIME TO TIME, HE PRESENTED TO YOU AND OTHERS

03:37PM 13 ABOUT THE QUALITY CONTROL PERFORMANCE THAT HE HAD BEEN

03:37PM 14 RECORDING; IS THAT CORRECT?

03:37PM 15 A. YES.

03:37PM 16 Q. OKAY. I'D LIKE TO HAVE YOU LOOK AT ANOTHER EXHIBIT, AND

03:37PM 17 IT SHOULD BE IN THE SAME BINDER, JUST A FEW TABS UP AT 20305.

03:37PM 18 A. UH-HUH.

03:37PM 19 Q. OKAY. DO YOU HAVE 20305 IN FRONT OF YOU?

03:37PM 20 A. YES.

03:37PM 21 Q. OKAY. AND THIS IS A DOCUMENT THAT IS HEADED CLINICAL

03:37PM 22 LABORATORY IMPROVEMENT AMENDMENTS, CLIA APPLICATION FOR

03:37PM 23 CERTIFICATION?

03:38PM 24 A. YES.

03:38PM 25 Q. AND IF YOU WANT TO FLIP THROUGH THE DOCUMENT, YOU KNOW,

03:38PM 1 PLEASE GO RIGHT AHEAD.

03:38PM 2 BUT THIS IS THE APPLICATION FOR CERTIFICATION BY CMS TO

03:38PM 3 OPERATE A CLINICAL LABORATORY AT THERANOS; CORRECT?

03:38PM 4 A. YES.

03:38PM 5 Q. AND YOU WERE LISTED AS THE LAB DIRECTOR ON IT?

03:38PM 6 A. YES.

03:38PM 7 Q. AND YOU PARTICIPATED IN FILLING OUT THIS FORM SO IT COULD

03:38PM 8 BE SUBMITTED TO THAT GOVERNMENT AGENCY, CMS?

03:38PM 9 A. YES.

03:38PM 10 Q. AND YOU SIGNED THE DOCUMENT?

03:38PM 11 A. YES.

03:38PM 12 Q. AND YOU WERE TRYING TO BE AS ACCURATE AS YOU COULD BE WHEN

03:38PM 13 YOU SUBMITTED THIS TO THE GOVERNMENT?

03:38PM 14 A. YES.

03:38PM 15 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20305?

03:38PM 16 MR. BOSTIC: NO OBJECTION.

03:38PM 17 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:38PM 18 (DEFENDANT'S EXHIBIT 20305 WAS RECEIVED IN EVIDENCE.)

03:38PM 19 BY MR. COOPERSMITH:

03:38PM 20 Q. SO LOOKING AT THE FIRST PAGE, THERE IS THE TITLE, THIS IS

03:38PM 21 THE APPLICATION FOR CERTIFICATION.

03:38PM 22 AND THE DATE OF THE DOCUMENT, JUST TO SORT OF ORIENT US,

03:38PM 23 IF YOU GO TO PAGE 4 OF THE DOCUMENT?

03:39PM 24 A. YES.

03:39PM 25 Q. AND IS THAT YOUR SIGNATURE THERE, DR. ROSENDORFF?

03:39PM 1 A. YES.

03:39PM 2 Q. AND THEN THE DATE IS NOVEMBER 25TH, 2013.

03:39PM 3 AM I READING THAT RIGHT?

03:39PM 4 A. YES.

03:39PM 5 Q. OKAY. IS THAT WHEN YOU SUBMITTED THE DOCUMENT?

03:39PM 6 A. YES.

03:39PM 7 Q. AND THAT WAS ACTUALLY A FEW WEEKS BEFORE OR SHORTLY BEFORE

03:39PM 8 THE INSPECTION THAT YOU TALKED ABOUT WITH MR. BOSTIC ON DIRECT

03:39PM 9 EXAMINATION?

03:39PM 10 A. I DON'T RECALL THE EXACT DATE OF THE INSPECTION.

03:39PM 11 Q. OKAY.

03:39PM 12 A. IT WAS AROUND THEN.

03:39PM 13 Q. AROUND THEN. OKAY.

03:39PM 14 AND THEN IF YOU GO TO THE FIRST PAGE, YOU SEE THE NAME OF

03:39PM 15 THE DIRECTOR IS ROSENDORFF ADAM, OR ADAM ROSENDORFF.

03:39PM 16 DO YOU SEE THAT?

03:39PM 17 A. YES.

03:39PM 18 Q. BECAUSE YOU WERE THE LABORATORY DIRECTOR?

03:39PM 19 A. CORRECT.

03:39PM 20 Q. AND BY THIS TIME YOU WERE ON THE CLIA LICENSE, OR WERE YOU

03:39PM 21 APPLYING TO BE ON THE CLIA LICENSE?

03:39PM 22 A. I DON'T RECALL EXACTLY.

03:39PM 23 Q. OKAY. BUT YOU DID END UP ON THE CLIA LICENSE; IS THAT

03:40PM 24 CORRECT?

03:40PM 25 A. YES.

03:40PM 1 Q. OKAY. AND IF YOU GO TO THE PAGE 3 OF THE DOCUMENT?

03:40PM 2 A. YES.

03:40PM 3 Q. DO YOU SEE THERE'S A SECTION CALLED WAIVED TESTING?

03:40PM 4 A. YES.

03:40PM 5 Q. AND IT SAYS -- IT INDICATES THAT "THE ESTIMATED TOTAL

03:40PM 6 ANNUAL TEST VOLUME FOR ALL WAIVED TESTS PERFORMED."

03:40PM 7 DO YOU SEE THAT?

03:40PM 8 A. YES.

03:40PM 9 Q. AND IS THE NUMBER 200 THERE?

03:40PM 10 A. YES.

03:40PM 11 Q. AND IS THAT YOUR HANDWRITING?

03:40PM 12 A. I DON'T KNOW ACTUALLY TO BE HONEST.

03:40PM 13 Q. OKAY. BUT NONETHELESS, THAT'S WHAT THE NUMBER IS, AM I

03:40PM 14 READING IT RIGHT, 200?

03:40PM 15 A. YES.

03:40PM 16 Q. AND CAN YOU TELL US WHAT A WAIVED TEST IS?

03:40PM 17 A. IT'S A CATEGORY OF TESTING THAT REQUIRES MINIMAL SKILLS

03:40PM 18 AND IT'S SUBJECT TO A LOWER LEVEL OF REGULATION THAN HIGH

03:40PM 19 COMPLEXITY TESTING.

03:41PM 20 Q. OKAY. SO IF THERE'S A WAIVED TEST, THE TEST WOULD BE

03:41PM 21 SOMETHING THAT SOMEONE WITH MINIMAL OR LOWER SKILLS COULD

03:41PM 22 CONDUCT?

03:41PM 23 A. YES.

03:41PM 24 Q. AS OPPOSED TO LIKE SOMEONE LIKE A CLINICAL LAB SCIENTIST?

03:41PM 25 A. CORRECT.

03:41PM 1 Q. OKAY. AND ARE YOU AWARE THAT WITH WAIVED TESTING, THAT
03:41PM 2 SOMETIMES THOSE DEVICES COULD BE PLACED IN THE FIELD?

03:41PM 3 A. I'M SORRY, WHAT DO YOU MEAN BY "IN THE FIELD"?

03:41PM 4 Q. LIKE IN A PHYSICIAN'S OFFICE OR A HOSPITAL OR --

03:41PM 5 A. YES, YES.

03:41PM 6 Q. OKAY. THANK YOU.

03:41PM 7 AND THEN IF YOU GO TO PAGE 5 OF THE DOCUMENT, YOU SEE
03:41PM 8 THERE'S A LABORATORY TESTING DECLARATION THERE?

03:41PM 9 A. YES.

03:41PM 10 Q. AND THEN THERE'S HANDWRITING THAT FILLS IN A NUMBER OF THE
03:42PM 11 INFORMATION FOR THE VARIOUS ASSAYS.

03:42PM 12 DO YOU SEE THAT?

03:42PM 13 A. YES.

03:42PM 14 Q. AND IS THAT YOUR HANDWRITING?

03:42PM 15 A. I BELIEVE SO, YES.

03:42PM 16 Q. OKAY. THEN IF YOU GO TO THE NEXT PAGE, PAGE 6, DO YOU SEE
03:42PM 17 THERE'S A SECTION CALLED HIV --

03:42PM 18 A. THAT IS NOT -- I'M SORRY. GO AHEAD.

03:42PM 19 Q. I'M SORRY. I'LL FINISH MY QUESTION.

03:42PM 20 A. YEAH, PLEASE DO.

03:42PM 21 Q. THE SECTION IS CALLED "LIST ALL OTHER TESTS PERFORMED AND
03:42PM 22 ANNUAL TEST VOLUME."

03:42PM 23 DO YOU SEE THAT?

03:42PM 24 A. YES.

03:42PM 25 Q. OKAY. AND THEN THERE'S A -- THE FIRST ONE LISTED IS HIV

03:42PM 1 RNA" I BELIEVE IT SAYS AVANT, "REALTIME PCR."

03:42PM 2 DO YOU SEE THAT?

03:42PM 3 A. YES.

03:42PM 4 Q. OKAY. AND THAT'S A MOLECULAR TEST FOR HIV; IS THAT

03:42PM 5 CORRECT?

03:42PM 6 A. YES.

03:42PM 7 Q. AND THERANOS OFFERED THAT ON FDA PREDICATE MACHINES?

03:42PM 8 A. CORRECT.

03:42PM 9 Q. AT ALL TIMES THAT YOU WERE THERE; CORRECT?

03:43PM 10 A. NO. I THINK FOR A SHORT TIME HEPATITIS C WAS OFFERED ON

03:43PM 11 THE EDISON.

03:43PM 12 Q. OKAY. THANK YOU.

03:43PM 13 BUT JUST TALKING ABOUT HIV?

03:43PM 14 A. YES, TO MY KNOWLEDGE.

03:43PM 15 Q. AND ALL OF THE TIME YOU WERE AT THERANOS, THE HIV TEST WAS

03:43PM 16 OFFERED ON AN UNMODIFIED FDA APPROVED PREDICATE MACHINE;

03:43PM 17 CORRECT?

03:43PM 18 A. YES.

03:43PM 19 Q. OKAY.

03:43PM 20 A. THAT'S NOT MY HANDWRITING, BY THE WAY.

03:43PM 21 Q. OKAY. IF YOU GO TO THE NEXT, PAGE 7?

03:43PM 22 A. UH-HUH.

03:43PM 23 Q. DO YOU SEE THERE'S SOMETHING CALLED DIRECTOR'S

03:43PM 24 ATTESTATION?

03:43PM 25 A. YES.

03:43PM 1 Q. AND THIS IS A FORM THAT YOU FILLED OUT AND SIGNED; IS THAT
03:43PM 2 CORRECT?

03:43PM 3 A. YES.

03:43PM 4 Q. AND THAT YOU SAID, EFFECTIVE AUGUST 6TH, 2013, I AM THE
03:43PM 5 LABORATORY DIRECTOR.

03:43PM 6 DO YOU SEE THAT?

03:43PM 7 A. YES.

03:43PM 8 Q. AND DOES THAT REFRESH YOUR MEMORY THAT YOU WERE THE
03:44PM 9 LABORATORY DIRECTOR AT THERANOS AS OF AUGUST 6TH, 2013?

03:44PM 10 A. IT DOESN'T REFRESH MY MEMORY. I'M JUST READING IT, AS YOU
03:44PM 11 ARE TODAY.

03:44PM 12 Q. OKAY. DO YOU HAVE ANY REASON TO DOUBT THAT THAT DATE THAT
03:44PM 13 YOU WROTE DOWN IS CORRECT?

03:44PM 14 A. NO. IT SOUNDS ABOUT RIGHT.

03:44PM 15 Q. OKAY. AND NOW, BELOW THAT IT HAS THE ADDRESS OF THERANOS;
03:44PM 16 RIGHT?

03:44PM 17 A. YES.

03:44PM 18 Q. AND THERE'S A CLIA NUMBER.

03:44PM 19 DO YOU SEE THAT?

03:44PM 20 A. YES.

03:44PM 21 Q. AND WHAT IS A CLIA NUMBER?

03:44PM 22 A. UM, IT'S A, IT'S A NUMBER THAT LFS GIVES TO A LAB. SO
03:44PM 23 THIS WOULD HAVE BEEN THE NUMBER THAT WAS GIVEN TO THE LAB WHEN
03:44PM 24 IT FIRST OPENED, SO THAT'S REFERENCED IN ALL COMMUNICATIONS
03:44PM 25 WITH LFS.

03:44PM 1 Q. YOU MEAN LABORATORY FIELD SERVICES?

03:44PM 2 A. CORRECT.

03:44PM 3 Q. OKAY. AND THEN BELOW THAT IT SAYS, "AS THE DIRECTOR OR
03:44PM 4 CO-DIRECTOR, I ASSUME ALL DIRECTORSHIP RESPONSIBILITIES FOR
03:44PM 5 CLIA AND STATE OF CALIFORNIA PURPOSES."

03:44PM 6 DO YOU SEE THAT?

03:45PM 7 A. YES.

03:45PM 8 Q. AND THEN IT GOES ON, "I UNDERSTAND THAT AS A DIRECTOR OF
03:45PM 9 THIS LABORATORY, I AM RESPONSIBLE FOR THE ACCURACY AND
03:45PM 10 RELIABILITY OF ALL TESTING PERFORMED BY THE LABORATORY AND FOR
03:45PM 11 ENSURING THAT THE LABORATORY MEETS ALL APPLICABLE CLIA AND
03:45PM 12 STATE REQUIREMENTS AS STIPULATED IN BOTH FEDERAL AND CALIFORNIA
03:45PM 13 LAWS," AND IT HAS CITATIONS TO VARIOUS REGULATIONS.

03:45PM 14 DO YOU SEE THAT?

03:45PM 15 A. YES.

03:45PM 16 Q. OKAY. AND THAT WAS WHAT YOU WERE ATTESTING TO, ONE OF THE
03:45PM 17 THINGS YOU WERE ATTESTING TO WHEN YOU SIGNED THIS DOCUMENT; IS
03:45PM 18 THAT CORRECT?

03:45PM 19 A. YES.

03:45PM 20 Q. AND, IN FACT, AS THE LABORATORY DIRECTOR ON THE CLIA
03:45PM 21 LICENSE, YOU WERE, IN FACT, RESPONSIBLE FOR THE ACCURACY AND
03:45PM 22 RELIABILITY OF ALL TESTING; IS THAT CORRECT?

03:45PM 23 A. SO AS I SAID, THE LABORATORY OWNER IS JOINTLY RESPONSIBLE
03:45PM 24 WITH THE DIRECTOR FOR ANY DEFICIENCIES, AND IF THE LABORATORY
03:45PM 25 SANCTIONED, BOTH THE OWNER AND THE LABORATORY DIRECTOR ARE

03:45PM 1 SANCTIONED.

03:45PM 2 Q. RIGHT. SO THAT'S WHAT IS DISCUSSED IN THAT SECOND

03:46PM 3 PARAGRAPH RIGHT BELOW THAT; RIGHT?

03:46PM 4 A. YES.

03:46PM 5 Q. AND YOU'RE ALSO ATTESTING THAT YOU UNDERSTAND THAT YOU

03:46PM 6 WOULD -- "WILL BE HELD JOINTLY AND SEVERALLY RESPONSIBLE WITH

03:46PM 7 THE LABORATORY OWNERS FOR ANY VIOLATIONS OF LAW BY THE CLINICAL

03:46PM 8 LABORATORY."

03:46PM 9 DO YOU SEE THAT?

03:46PM 10 A. YES.

03:46PM 11 Q. AND SO THE OWNER COULD BE RESPONSIBLE FOR PROBLEMS, ALONG

03:46PM 12 WITH YOURSELF?

03:46PM 13 A. YES.

03:46PM 14 Q. OKAY. BUT YOU ARE ATTESTING THAT YOU ARE RESPONSIBLE FOR

03:46PM 15 THE ACCURACY AND RELIABILITY OF ALL TESTING PERFORMED BY THE

03:46PM 16 LABORATORY; CORRECT?

03:46PM 17 A. YES.

03:46PM 18 Q. AND IF YOU GO TO THE NEXT PAGE, THIS IS PAGE 8, DO YOU SEE

03:46PM 19 THERE'S ANOTHER FORM CALLED LABORATORY PERSONNEL REPORT?

03:46PM 20 A. YES.

03:46PM 21 Q. AND SO THIS IS WHERE YOU WROTE DOWN THE PEOPLE WHO WORKED

03:46PM 22 IN THE CLIA LABORATORY -- OR I'M SORRY. LET ME BE MORE

03:46PM 23 ACCURATE.

03:46PM 24 THERE'S A LIST HERE OF THE PEOPLE WHO WORKED IN THE CLIA

03:46PM 25 LABORATORY AS OF THE TIME THIS FORM WAS FILLED OUT; IS THAT

03:47PM 1 RIGHT?

03:47PM 2 A. YES.

03:47PM 3 Q. OKAY. AND ONE OF THEM -- THE FIRST ONE IS YOURSELF,

03:47PM 4 ADAM ROSENDORFF.

03:47PM 5 DO YOU SEE THAT?

03:47PM 6 A. YES, I DO.

03:47PM 7 Q. AND THE NEXT PERSON LISTED IS HODA ALAMDAR.

03:47PM 8 DO YOU SEE THAT?

03:47PM 9 A. IT'S ALAMDAR.

03:47PM 10 Q. OKAY. AND SHE WAS A CLINICAL LAB SCIENTIST; CORRECT?

03:47PM 11 A. YES.

03:47PM 12 Q. ACTUALLY, IT MIGHT BE EASIER TO GO TO PAGE 9. THERE'S A

03:47PM 13 SIMILAR LIST ON PAGE 9.

03:47PM 14 DO YOU SEE THAT?

03:47PM 15 A. YES.

03:47PM 16 Q. AND THIS HAS THE EMPLOYEE NAME AND THE FUNCTION OF THE

03:47PM 17 VARIOUS PEOPLE ON THE RIGHT-HAND COLUMN?

03:47PM 18 A. YES.

03:47PM 19 Q. OKAY. AND SO GOING BACK TO THE LIST, MS. ALAMDAR, I'LL

03:47PM 20 PRONOUNCE HER NAME RIGHT HOPEFULLY, THAT WAS -- SHE WAS A CLS;

03:47PM 21 RIGHT?

03:47PM 22 A. YES.

03:47PM 23 Q. AND THEN THERE'S CHI NGUYEN.

03:47PM 24 DO YOU SEE THAT?

03:47PM 25 A. YES.

03:47PM 1 Q. ALSO A CLS?

03:47PM 2 A. YES.

03:47PM 3 Q. AND SARAH CABAYAN, ALSO A CLS?

03:48PM 4 A. YES.

03:48PM 5 Q. AND THEN KERRY ELENITOBA-JOHNSON, SHE'S A TECHNICAL

03:48PM 6 SUPERVISOR; IS THAT RIGHT?

03:48PM 7 A. CORRECT.

03:48PM 8 Q. AND A TECHNICAL SUPERVISOR IS ACTUALLY SOMETHING THAT IS

03:48PM 9 REQUIRED BY THE CMS REGULATIONS; IS THAT RIGHT?

03:48PM 10 A. YEAH. I'M NOT SURE EXACTLY, BUT I THINK A LAB NEEDS AT

03:48PM 11 LEAST ONE TS, ONE GS, AND A DIRECTOR.

03:48PM 12 Q. ONE TECHNICAL SUPERVISOR AND ONE GENERAL SUPERVISOR, ALONG

03:48PM 13 WITH THE LAB DIRECTOR; RIGHT?

03:48PM 14 A. YEAH.

03:48PM 15 Q. AND THE TECHNICAL SUPERVISOR ROLE, THAT'S ACTUALLY

03:48PM 16 SOMETHING REQUIRED BY THE CMS GOVERNMENT REGULATIONS?

03:48PM 17 A. YES.

03:48PM 18 Q. AND THE SAME WITH THE GENERAL SUPERVISOR?

03:48PM 19 A. YES.

03:48PM 20 Q. OKAY. AND THEN THE GENERAL SUPERVISOR LISTED HERE IS

03:48PM 21 LI DING-CHIANG.

03:48PM 22 DO YOU SEE THAT?

03:48PM 23 A. YES.

03:48PM 24 Q. AND THEN THERE ARE OTHER PEOPLE LISTED HERE AS LABORATORY

03:48PM 25 TECHNICIANS.

03:49PM 1 DO YOU SEE THAT?

03:49PM 2 A. YES.

03:49PM 3 Q. AND ONE OF THEM WAS SURAJ SAKSENA.

03:49PM 4 DO YOU SEE THAT?

03:49PM 5 A. YES.

03:49PM 6 Q. AND YOU KNEW DR. SAKSENA; RIGHT?

03:49PM 7 A. YES.

03:49PM 8 Q. AND HE WAS A PH.D. WHO WORKED AT THERANOS?

03:49PM 9 A. I DON'T RECALL HIS DEGREE.

03:49PM 10 Q. OKAY. AND THEN ANOTHER LABORATORY TECHNICIAN LISTED HERE

03:49PM 11 IS NISHIT DOSHI.

03:49PM 12 DO YOU SEE THAT?

03:49PM 13 A. YES.

03:49PM 14 Q. AND ALSO A PERSON WHO HAD A PH.D.?

03:49PM 15 A. I DON'T REMEMBER.

03:49PM 16 Q. OKAY. AND THEN IF YOU GO TO THE NEXT PAGE, WHICH IS

03:49PM 17 PAGE 10 --

03:49PM 18 A. YES.

03:49PM 19 Q. -- AND THIS IS A FORM THAT THE STATE FILLS OUT; IS THAT

03:49PM 20 CORRECT?

03:49PM 21 A. THIS IS THE FIRST TIME THAT I'VE SEEN THIS FORM.

03:49PM 22 Q. OKAY. AND HAVE YOU EVER SEEN THIS TYPE OF FORM BEFORE?

03:49PM 23 A. NO.

03:49PM 24 Q. OKAY. BUT DO YOU SEE THAT THE SIGNATURE AT THE BOTTOM

03:50PM 25 DATED JANUARY 21ST, 2014, IS NOT YOUR SIGNATURE; RIGHT?

03:50PM 1 A. CORRECT.

03:50PM 2 Q. AND THE PERSON WHO IS THE INSPECTOR LISTED AT THE TOP IS

03:50PM 3 EILEEN NORKIN.

03:50PM 4 DO YOU SEE THAT?

03:50PM 5 A. YES.

03:50PM 6 Q. AND IT SAYS DATE OF INSPECTION, DECEMBER 3RD, 2013.

03:50PM 7 DO YOU SEE THAT?

03:50PM 8 A. YES.

03:50PM 9 Q. AND THAT'S THE INSPECTION THAT YOU WERE TALKING ABOUT WITH

03:50PM 10 MR. BOSTIC; IS THAT RIGHT?

03:50PM 11 A. I BELIEVE SO, YES.

03:50PM 12 Q. AND DO YOU REMEMBER MEETING MS. NORKIN DURING THAT

03:50PM 13 INSPECTION?

03:50PM 14 A. I REMEMBER MEETING THE INSPECTOR, YES.

03:50PM 15 Q. OKAY. IF YOU COULD GO TO ANOTHER EXHIBIT, WHICH IS GOING

03:50PM 16 TO BE I BELIEVE IN THE FIRST OF YOUR BINDERS, AND IT'S

03:50PM 17 EXHIBIT 7386.

03:51PM 18 A. I'VE GOT IT.

03:51PM 19 Q. THANK YOU.

03:51PM 20 AND DO YOU RECOGNIZE THIS AS THE CERTIFICATE OF COMPLIANCE

03:51PM 21 ISSUED BY CMS?

03:51PM 22 A. YES.

03:51PM 23 Q. FOR THERANOS?

03:51PM 24 A. YES.

03:51PM 25 Q. AND DO YOU SEE YOUR NAME ON IT AS LABORATORY DIRECTOR?

03:51PM 1 A. YES.

03:51PM 2 MR. COOPERSMITH: YOUR HONOR, WE OFFER 7386.

03:51PM 3 MR. BOSTIC: NO OBJECTION.

03:51PM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:51PM 5 (DEFENDANT'S EXHIBIT 7386 WAS RECEIVED IN EVIDENCE.)

03:51PM 6 BY MR. COOPERSMITH:

03:51PM 7 Q. OKAY. THIS IS THE RESULT, BASICALLY, OF THE APPLICATION

03:51PM 8 THAT WE WERE JUST LOOKING AT; IS THAT RIGHT?

03:51PM 9 A. YES.

03:51PM 10 Q. AND THE EFFECTIVE DATE IS JANUARY 9TH, 2014.

03:51PM 11 DO YOU SEE THAT?

03:51PM 12 A. YES.

03:51PM 13 Q. AND THEN IT EXPIRES IN JANUARY 2016.

03:51PM 14 DO YOU SEE THAT?

03:51PM 15 A. YES.

03:51PM 16 Q. AND THEN IT'S LISTED YOURSELF AS THE LABORATORY DIRECTOR?

03:51PM 17 A. YES.

03:51PM 18 Q. OKAY. AND THEN DO YOU SEE BELOW THAT, AT THE BOTTOM OF

03:52PM 19 THE PAGE, IT HAS LAB CERTIFICATION CODE AND EFFECTIVE DATES?

03:52PM 20 A. YES.

03:52PM 21 Q. OKAY. AND THERE ARE SOME EFFECTIVE DATES THAT ARE EARLIER

03:52PM 22 THAN DECEMBER OF 2013.

03:52PM 23 DO YOU SEE THAT?

03:52PM 24 A. YES.

03:52PM 25 Q. AND IS THAT BECAUSE THE THERANOS LAB HAD BEEN IN

03:52PM 1 OPERATION, YOU KNOW, EARLIER FOR SOME PURPOSES?

03:52PM 2 A. I DON'T KNOW.

03:52PM 3 Q. OKAY. BUT YOU SEE THE DATES ON THE PAGE AT LEAST?

03:52PM 4 A. YES, I DO.

03:52PM 5 Q. OKAY. DR. ROSENDORFF, I'D LIKE YOU TO TAKE A LOOK AT, IT
03:52PM 6 SHOULD BE IN THE SAME BINDER, IT'S EXHIBIT 7603, AND THEN DD,
03:52PM 7 LIKE DAVID DAVID.

03:53PM 8 A. I HAVE IT.

03:53PM 9 Q. OKAY. AND DO YOU SEE THAT THIS IS REGULATIONS RELATING TO
03:53PM 10 THE DUTIES OF A LABORATORY DIRECTOR FOR LABORATORIES CONDUCTING
03:53PM 11 HIGH COMPLEXITY TESTING?

03:53PM 12 A. YES.

03:53PM 13 Q. AND THERE ARE SEVERAL REGULATIONS HERE WHICH ARE NUMBERED
03:53PM 14 IN ORDER.

03:53PM 15 DO YOU SEE THAT?

03:53PM 16 A. YES.

03:53PM 17 Q. AND THE FIRST ONE DEALS WITH THE NEED FOR A LABORATORY
03:53PM 18 DIRECTOR; CORRECT?

03:53PM 19 A. PARDON ME, SIR.

03:53PM 20 Q. I'M SORRY, DR. ROSENDORFF. THE FIRST -- WELL, LET ME STEP
03:53PM 21 BACK.

03:53PM 22 YOUR HONOR, WE OFFER 7603DD, WHICH IS A REGULATIONS
03:53PM 23 PROMULGATED BY CMS, FOR THE RECORD.

03:53PM 24 MR. BOSTIC: 401 AND 403, YOUR HONOR.

03:53PM 25 THE COURT: CAN YOU ESTABLISH -- MAYBE YOU WANT TO

03:54PM 1 LAY SOME MORE FOUNDATIONAL ISSUES REGARDING THAT.

03:54PM 2 MR. COOPERSMITH: SURE, YOUR HONOR. I WILL DO THAT.

03:54PM 3 Q. DR. ROSENDORFF, AS WE DISCUSSED BEFORE, THERE'S A SET OF
03:54PM 4 REGULATIONS THAT GOVERN THE OPERATION OF CLIA LABS IN THE
03:54PM 5 UNITED STATES?

03:54PM 6 A. CORRECT.

03:54PM 7 Q. AND THOSE REGULATIONS ARE ISSUED BY CMS?

03:54PM 8 A. YES.

03:54PM 9 Q. AND SOME OF THE REGULATIONS DEAL WITH THE DUTY OF A LAB
03:54PM 10 DIRECTOR; IS THAT RIGHT?

03:54PM 11 A. CORRECT.

03:54PM 12 Q. AND WHEN YOU WERE AT THERANOS, THOSE REGULATIONS GOVERNED
03:54PM 13 YOUR CONDUCT AS WELL?

03:54PM 14 A. GOVERNED MY?

03:54PM 15 Q. YOUR CONDUCT.

03:54PM 16 A. YES.

03:54PM 17 Q. AND THAT YOU WERE FAMILIAR WITH THE REGULATIONS WHILE YOU
03:54PM 18 WORKED AT THERANOS?

03:54PM 19 A. YES.

03:54PM 20 Q. AND YOU DID YOUR BEST TO ABIDE BY THEM?

03:54PM 21 A. YES, I DID.

03:54PM 22 Q. AND YOU WANTED TO MAKE SURE YOU WERE IN COMPLIANCE AS BEST
03:54PM 23 YOU COULD; RIGHT?

03:54PM 24 A. AS BEST I COULD BE ALLOWED UNDER THE CIRCUMSTANCES, YES.

03:54PM 25 Q. OKAY. BUT YOU TOOK THAT RESPONSIBILITY SERIOUSLY?

03:54PM 1 A. ABSOLUTELY.

03:54PM 2 MR. COOPERSMITH: OKAY. YOUR HONOR, WE OFFER

03:54PM 3 7603DD.

03:55PM 4 MR. BOSTIC: SAME OBJECTION AS TO ADMITTING THE

03:55PM 5 REGULATIONS.

03:55PM 6 THE COURT: I'D LIKE TO TALK YOU ABOUT THIS, BUT CAN

03:55PM 7 YOU ASK SOME MORE QUESTIONS ABOUT SOMETHING ELSE IN THE LAST

03:55PM 8 FIVE MINUTES?

03:55PM 9 MR. COOPERSMITH: YES, YOUR HONOR.

03:55PM 10 THE COURT: LET'S DO THAT.

03:55PM 11 BY MR. COOPERSMITH:

03:55PM 12 Q. SO NOT TALKING ABOUT THIS PARTICULAR DOCUMENT,

03:55PM 13 DR. ROSENDORFF, BUT JUST STICKING WITH THE SUBJECT OF

03:55PM 14 REGULATIONS.

03:55PM 15 A LAB DIRECTOR FOR A CLINICAL LAB DOESN'T HAVE TO BE AT

03:55PM 16 THE LAB FULL TIME; CORRECT?

03:55PM 17 A. CORRECT.

03:55PM 18 Q. AND, IN FACT, A LAB DIRECTOR COULD BE A LAB DIRECTOR WITH

03:55PM 19 AS MANY AS FIVE LABS ALL AT THE SAME TIME; RIGHT?

03:55PM 20 A. CORRECT. I DON'T KNOW IF THAT'S A CLIA REG OR A STATE

03:55PM 21 REG, BUT, YES, THAT'S MY UNDERSTANDING.

03:55PM 22 Q. OKAY. MAYBE WE'LL LOOK AT THAT LATER.

03:55PM 23 BUT WHETHER IT'S CLIA OR STATE, YOU'RE FAMILIAR WITH THE

03:55PM 24 REQUIREMENT, OR THE REGULATION THAT ALLOWS A LAB DIRECTOR TO BE

03:55PM 25 A LAB DIRECTOR FOR AS MANY AS FIVE LABS; RIGHT?

03:56PM 1 A. CORRECT.

03:56PM 2 Q. AND AT TIMES IN YOUR CAREER, YOU YOURSELF HAVE BEEN THE

03:56PM 3 LAB DIRECTOR OF MORE THAN ONE LABORATORY AT THE SAME TIME?

03:56PM 4 A. CORRECT.

03:56PM 5 Q. AND THAT'S NOT UNUSUAL IN THE LAB INDUSTRY?

03:56PM 6 A. NO, IT IS NOT.

03:56PM 7 Q. BUT WHEN YOU WERE AT THERANOS, YOU WERE THE FULL TIME LAB

03:56PM 8 DIRECTOR?

03:56PM 9 A. CORRECT.

03:56PM 10 Q. YOU DIDN'T HAVE ANOTHER JOB?

03:56PM 11 A. I DID NOT.

03:56PM 12 Q. YOU COULD HAVE PERHAPS SUPERVISED A DIFFERENT LABORATORY,

03:56PM 13 BUT YOU DIDN'T DO THAT; RIGHT?

03:56PM 14 A. I REALLY -- THE MAGNITUDE OF PROBLEMS THERE WERE SUCH THAT

03:56PM 15 I WOULDN'T HAVE BEEN ABLE TO DO THAT.

03:56PM 16 Q. YOU BELIEVED THAT THERANOS REQUIRED YOUR FULL-TIME

03:56PM 17 ATTENTION?

03:56PM 18 A. CORRECT.

03:56PM 19 Q. AND WHILE YOU WERE AT THERANOS, ONE OF THE

03:56PM 20 RESPONSIBILITIES THAT YOU HAD WAS TO SIGN OFF ON STANDARD

03:56PM 21 OPERATING PROCEDURES?

03:56PM 22 A. YES.

03:56PM 23 Q. AND THOSE WERE KNOWN AS SOP'S?

03:56PM 24 A. CORRECT.

03:56PM 25 Q. AND YOU WOULD AGREE THAT HAVING SOP'S IN PLACE IN A

03:56PM 1 LABORATORY WAS IMPORTANT?

03:56PM 2 A. YES.

03:56PM 3 Q. AND THAT FOLLOWING THOSE SOP'S WAS IMPORTANT?

03:56PM 4 A. YES.

03:56PM 5 Q. AND YOU HAD ASSISTANCE IN DEVELOPING SOP'S?

03:57PM 6 A. YES.

03:57PM 7 Q. YOU DIDN'T WRITE ALL OF THEM YOURSELF; RIGHT?

03:57PM 8 A. NO.

03:57PM 9 Q. BUT SOMETIMES YOU AUTHORED SOME OF THE SOP'S?

03:57PM 10 A. I DON'T RECALL.

03:57PM 11 Q. BUT IN ORDER FOR AN SOP TO BE IN PLACE IN THE THERANOS

03:57PM 12 LAB, YOU WOULD HAVE TO SIGN OFF ON IT?

03:57PM 13 A. CORRECT.

03:57PM 14 Q. AND IF THERE WASN'T AN SOP, THEN THERE WASN'T ANYTHING

03:57PM 15 GUIDING THE PRACTICES OF THE LAB; RIGHT?

03:57PM 16 A. THAT'S CORRECT.

03:57PM 17 Q. AND THAT WOULDN'T BE ACCEPTABLE; RIGHT?

03:57PM 18 A. CORRECT.

03:57PM 19 Q. AND IF THERE WAS AN SOP, PEOPLE WERE NOT FREE TO DO

03:57PM 20 SOMETHING DIFFERENT FROM WHAT THE SOP REQUIRED; RIGHT?

03:57PM 21 A. CORRECT.

03:57PM 22 Q. UNLESS YOU, AND IN CONSULTATION WITH OTHERS, DECIDED TO

03:57PM 23 CHANGE THE SOP?

03:57PM 24 A. CORRECT.

03:57PM 25 Q. OKAY.

03:57PM 1 YOUR HONOR, I'M GOING TO GO TO A DIFFERENT TOPIC, BUT
03:57PM 2 MAYBE THIS IS A GOOD TIME TO TAKE OUR BREAK.

03:57PM 3 THE COURT: SURE. LET'S BREAK AND TAKE OUR EVENING
03:57PM 4 RECESS, LADIES AND GENTLEMEN.

03:57PM 5 PLEASE RECALL THAT WE ARE NOT IN SESSION TOMORROW,
03:57PM 6 THURSDAY, BUT WE WILL BE IN SESSION FRIDAY, FRIDAY NEXT, NOT
03:58PM 7 TOMORROW, BUT FRIDAY AT 9:00 A.M. WE WILL BEGIN.

03:58PM 8 AND I BELIEVE WE FINISH, IS IT AT 3:00 O'CLOCK,
03:58PM 9 MS. ROBINSON?

03:58PM 10 THE CLERK: YES.

03:58PM 11 THE COURT: PROBABLY ABOUT 2:45 AGAIN, A LITTLE
03:58PM 12 BEFORE 3:00.

03:58PM 13 LET ME REMIND YOU OF THE ADMONITION. PLEASE DO NOT DO ANY
03:58PM 14 INVESTIGATION, DISCUSS, WATCH, OR DO ANYTHING TO LEARN ANYTHING
03:58PM 15 ABOUT THIS CASE DURING THE BREAK.

03:58PM 16 HAVE A GOOD EVENING, AND WE'LL SEE YOU FRIDAY. THANK YOU.
03:59PM 17 (JURY OUT AT 3:59 P.M.)

03:59PM 18 THE COURT: DR. ROSENDORFF, YOU CAN LEAVE NOW.
03:59PM 19 WE'LL SEE YOU FRIDAY.

03:59PM 20 PLEASE BE SEATED.

03:59PM 21 THE WITNESS: THANK YOU, YOUR HONOR.

03:59PM 22 THE COURT: THE RECORD SHOULD REFLECT THAT OUR JURY
03:59PM 23 HAS LEFT FOR THE DAY.

03:59PM 24 DR. ROSENDORFF HAS LEFT THE COURTROOM.

03:59PM 25 ALL COUNSEL AND MR. BALWANI REMAIN.

03:59PM 1 REGARDING THIS EXHIBIT, 7603DD, I WANTED TO ASK YOU,
03:59PM 2 MR. COOPERSMITH, ABOUT -- ONE OF THE CONCERNS THAT I HAVE IS
03:59PM 3 WHAT SHOULD WE DO, IF THIS IS ADMITTED, WHAT SHOULD WE DO
03:59PM 4 ABOUT -- I THINK I EXPRESSED THIS ON SOME OTHER REGULATIONS.

04:00PM 5 MY CONCERN IS THAT THE JURY MIGHT LOOK AT THIS AND USE
04:00PM 6 THIS RATHER THAN THE COURT'S INSTRUCTIONS AND FINAL
04:00PM 7 INSTRUCTIONS AS TO THEIR DETERMINATION.

04:00PM 8 I WAS CURIOUS WHAT YOU WOULD DO IF THIS WERE ADMITTED AND
04:00PM 9 HOW WOULD YOU -- WHAT IS YOUR PURPOSE?

04:00PM 10 MR. COOPERSMITH: THANK YOU, YOUR HONOR. I
04:00PM 11 UNDERSTAND.

04:00PM 12 THE PURPOSE IS JUST TO MAKE SURE THAT THE JURY UNDERSTANDS
04:00PM 13 WHAT HE'S REQUIRED TO DO AND WHAT HE UNDERSTANDS HE'S REQUIRED
04:00PM 14 TO DO BASED ON THE REGULATION.

04:00PM 15 AND I'M NOT TRYING TO SUPPLANT THE COURT'S PROVINCE TO
04:00PM 16 INSTRUCT THE JURY ON THE LAW.

04:00PM 17 THE COURT: SURE.

04:00PM 18 MR. COOPERSMITH: AND FRANKLY, THE JURY COULD BE
04:00PM 19 TOLD THAT AS FAR AS I'M CONCERNED.

04:00PM 20 BUT IT'S JUST TO SORT OF SET A BASELINE FOR WHAT A LAB
04:00PM 21 DIRECTOR IS SUPPOSED TO DO --

04:00PM 22 THE COURT: RIGHT.

04:00PM 23 MR. COOPERSMITH: -- SO WE ALL UNDERSTAND WHAT THOSE
04:00PM 24 DUTIES ARE.

04:00PM 25 THE COURT: I APPRECIATE THAT.

04:00PM 1 COULD YOU ACCOMPLISH THIS BY USING THIS AS A
04:00PM 2 DEMONSTRATIVE?

04:00PM 3 MR. COOPERSMITH: PROBABLY, YOUR HONOR.

04:00PM 4 THE COURT: AND DISPLAYING IT FOR THE JURY AND FOR
04:00PM 5 HIM AND ASKING WHETHER HE AGREES, DISAGREES, UNDERSTANDS,
04:01PM 6 ET CETERA, WITH THOSE?

04:01PM 7 AND THEN IF YOU WANTED TO USE THAT AGAIN, I'M NOT
04:01PM 8 DIRECTING YOUR CASE AT ALL, BUT SUGGESTING THAT IT COULD BE
04:01PM 9 USED AS A DEMONSTRATIVE IN CLOSING IF THAT WAS YOUR INTENT.

04:01PM 10 MR. COOPERSMITH: YOU KNOW, YOUR HONOR, GIVEN THE
04:01PM 11 COURT'S CONCERN, I THINK THAT WOULD WORK JUST FINE. WE CAN DO
04:01PM 12 IT THAT WAY.

04:01PM 13 AND, YOU KNOW, I'M FINE WITH IT.

04:01PM 14 THE COURT: THAT'S JUST A CONCERN THAT I HAD.

04:01PM 15 MR. BOSTIC.

04:01PM 16 MR. BOSTIC: SO THE GOVERNMENT SHARES THE COURT'S
04:01PM 17 CONCERN. THAT'S WHAT MOTIVATED THE OBJECTION.

04:01PM 18 I THINK HAVING IT AS A DEMONSTRATIVE AND NOT IN EVIDENCE
04:01PM 19 IS A STEP IN THE RIGHT DIRECTION, BUT I STILL THINK IT CARRIES
04:01PM 20 SOME DANGER OF HOLDING OUT A LAW TO THE JURY AND WHAT ARE WE
04:01PM 21 ASKING THEM TO DO WITH IT?

04:01PM 22 ARE WE ASKING THEM TO JUDGE DR. ROSENDORFF'S PERFORMANCE
04:01PM 23 AGAINST IT OR TO JUDGE THERANOS'S COMPLIANCE WITH IT?

04:01PM 24 THOSE AREN'T THE QUESTIONS THAT ARE FACING THIS JURY, AND
04:02PM 25 I THINK THERE IS SOME DANGER THAT THEY WILL BE CONFUSED AND

04:02PM 1 COME TO BELIEVE THAT EITHER A VIOLATION OF SOME PROVISION IN
04:02PM 2 HERE IS RELEVANT TO THEIR DETERMINATION, OR COMPLIANCE WITH A
04:02PM 3 PROVISION IN HERE IS RELEVANT TO THEIR DETERMINATION.

04:02PM 4 I HEAR WHAT MR. COOPERSMITH IS SAYING ABOUT ESTABLISHING
04:02PM 5 THE RESPONSIBILITIES OF THE LAB DIRECTOR, BUT I DON'T SENSE ANY
04:02PM 6 FRICTION BETWEEN MR. COOPERSMITH AND THE WITNESS ON THAT POINT.

04:02PM 7 I THINK DR. ROSENDORFF HAS A GOOD UNDERSTANDING OF WHAT
04:02PM 8 THE JOB OF A LAB DIRECTOR REQUIRES, AND I DON'T THINK IT'S
04:02PM 9 NECESSARY TO HAVE THIS AUTHORITY IN FRONT OF THE JURY AS
04:02PM 10 SOMETHING THAT THEY NEED TO RELY ON WHEN THERE DOESN'T SEEM TO
04:02PM 11 BE ANY CONTROVERSY ABOUT WHAT A LAB DIRECTOR DOES OR DOESN'T
04:02PM 12 DO.

04:02PM 13 MR. COOPERSMITH: YOUR HONOR, FIRST OF ALL, I WOULD
04:02PM 14 NOTE THAT DURING DIRECT, MR. -- OR DR. ROSENDORFF TESTIFIED
04:03PM 15 EXTENSIVELY ABOUT LEGAL REQUIREMENTS.

04:03PM 16 HE TESTIFIED ABOUT HOW THERE WERE CERTAIN REQUIREMENTS FOR
04:03PM 17 PROFICIENCY TESTING, AND HE DIDN'T BELIEVE THAT IT WAS BEING
04:03PM 18 FOLLOWED, AND YOU KNOW, HE WAS SENDING EMAILS ABOUT THAT.

04:03PM 19 AND SO THAT WAS A PART OF THE DIRECT.

04:03PM 20 I THINK WE SAW SOMETHING SIMILAR WITH DR. PANDORI WHEN HE
04:03PM 21 TESTIFIED.

04:03PM 22 SO IT'S INTERESTING FOR THE GOVERNMENT TO HAVE GONE DOWN
04:03PM 23 THAT ROAD AND THEN OBJECTED TO A MUCH MORE BASIC SET OF
04:03PM 24 REGULATIONS WHICH GOVERNS DR. ROSENDORFF'S CONDUCT AND SETS THE
04:03PM 25 STANDARD.

04:03PM 1 SO I'M COMFORTABLE DOING IT AS A DEMONSTRATIVE IF THE
04:03PM 2 COURT IS CONCERNED ABOUT THE DOCUMENT BEING IN EVIDENCE, BUT I
04:03PM 3 THINK IT'S IMPORTANT FOR THE JURY TO HEAR WHAT THE LAW REQUIRES
04:03PM 4 DR. ROSENDORFF TO DO, ESPECIALLY SINCE HE HAS AN UNDERSTANDING
04:03PM 5 OF THAT.

04:03PM 6 THE COURT: WELL, ALL RIGHT. THANK YOU.

04:03PM 7 I SUPPOSE MY CONCERN IS, IS THIS GOING TO BE USED SOMEHOW
04:03PM 8 TO ARGUE TO THE JURY THAT HE VIOLATED WHATEVER THE REGULATIONS
04:04PM 9 MIGHT BE AND, THEREFORE, HE'S -- HIS, WHATEVER, HIS CREDIBILITY
04:04PM 10 SHOULD BE QUESTIONED, OR --

04:04PM 11 MR. COOPERSMITH: ACTUALLY NOT, YOUR HONOR. I'LL BE
04:04PM 12 VERY TRANSPARENT. THAT'S NOT REALLY THE PURPOSE.

04:04PM 13 THE PURPOSE IS JUST TO EXPLAIN WHAT THE DUTIES OF A LAB
04:04PM 14 DIRECTOR ARE AND TO, AGAIN, BE TRANSPARENT. LIKE, WHAT ARE HIS
04:04PM 15 DUTIES AND WHAT ARE OTHER PEOPLE'S DUTIES, SUCH AS MR. BALWANI
04:04PM 16 OR OTHERS, AND JUST TO UNDERSTAND WHAT THAT IS.

04:04PM 17 AND HE SAID HE TAKES IT SERIOUSLY.

04:04PM 18 I'M NOT TRYING TO MAKE A CASE THAT HE VIOLATED ONE OF
04:04PM 19 THESE LABORATORY DIRECTOR REGULATIONS AND THEREFORE HE'S LIABLE
04:04PM 20 FOR SOMETHING OR GUILTY OF SOMETHING.

04:04PM 21 MR. BOSTIC: AND, YOUR HONOR, IF THAT'S THE CASE,
04:04PM 22 THEN WHY DO WE NEED THE LAW?

04:04PM 23 THIS WITNESS CAN TESTIFY ABOUT WHAT HIS JOB DUTIES WERE.
04:04PM 24 HE LIVED AND BREATHED THEM FOR HIS ENTIRE TIME WITH THE
04:04PM 25 COMPANY.

04:04PM 1 SO HE CAN TALK ABOUT WHAT BEING A LAB DIRECTOR MEANT AT
04:04PM 2 THERANOS, WHAT HE DID, AND WHAT FELL UNDER HIS RESPONSIBILITY
04:04PM 3 AND WHAT DIDN'T.

04:04PM 4 THE GOVERNMENT'S QUESTION IS, WHY DOES IT MATTER WHAT THE
04:04PM 5 LAW REQUIRES? WHAT IS THE JURY SUPPOSED TO DO WITH THAT? ARE
04:05PM 6 THEY SUPPOSED TO JUDGE WHETHER DR. ROSENDORFF COMPLIED WITH THE
04:05PM 7 LAW? WHY IS IT IMPORTANT THAT THERE IS THIS AUTHORITY THAT
04:05PM 8 REQUIRES THOSE THINGS?

04:05PM 9 YES, DR. ROSENDORFF TESTIFIED ABOUT THE REGULATIONS ON
04:05PM 10 DIRECT.

04:05PM 11 I DIDN'T ASK HIM QUESTIONS ABOUT THAT. THAT'S WHERE HIS
04:05PM 12 ANSWERS WENT.

04:05PM 13 AGAIN, THAT IS DIFFERENT FROM PUTTING UP OR DISPLAYING THE
04:05PM 14 TEXT OF THE LAW TO A JURY WHEN THAT'S NOT A LAW AT ISSUE IN THE
04:05PM 15 CASE AND THEY'RE NOT BEING ASKED TO JUDGE CONDUCT AGAINST IT.

04:05PM 16 THE COURT: WELL, THAT'S WHAT I WAS ASKING ABOUT, IF
04:05PM 17 YOU WERE GOING TO ATTACK HIS PERFORMANCE OR CRITICIZE, IN SOME
04:05PM 18 WAY BRING PERFORMANCE INTO QUESTION REGARDING A DEFICIENCY IN
04:05PM 19 THE REGULATIONS. THAT PRESENTS THE PROBLEM.

04:05PM 20 MR. COOPERSMITH: YEAH, I UNDERSTAND, YOUR HONOR.

04:05PM 21 IF I ATTACK HIS PERFORMANCE, IT WILL NOT BE BECAUSE I'M
04:05PM 22 ARGUING HE VIOLATED THIS REGULATION.

04:05PM 23 ALL I WANT TO DO IS PUT THE REGULATION UP IN FRONT OF THE
04:06PM 24 JURY, PERHAPS AS A DEMONSTRATIVE IF THAT'S WHAT THE COURT WOULD
04:06PM 25 PREFER, AND THEN TO JUST SAY, DO YOU UNDERSTAND THAT THIS WAS

04:06PM 1 THE DUTY OF A LAB DIRECTOR?

04:06PM 2 AS SIMPLE AS THAT, AND THEN WE'LL MOVE ON. THAT'S THE
04:06PM 3 GOAL.

04:06PM 4 THE COURT: SURE.

04:06PM 5 MR. COOPERSMITH: AND IT'S NOT TO TRY TO CREATE SOME
04:06PM 6 KIND OF, YOU KNOW, OTHER TRIAL THAT DR. ROSENDORFF IS GUILTY OF
04:06PM 7 SOMETHING.

04:06PM 8 THE COURT: SO ARE YOU TELLING ME -- AND I'M NOT
04:06PM 9 ASKING YOU -- DON'T ANSWER THIS QUESTION IF YOU HAVE DISCOMFORT
04:06PM 10 BECAUSE I'M NOT GOING TO ASK YOU TO REVEAL ANY DEFENSE OR
04:06PM 11 ANYTHING -- BUT ARE YOU TELLING ME THAT THE PURPOSE OF THIS IS
04:06PM 12 TO LET THE JURY KNOW THAT THIS WITNESS UNDERSTANDS HIS
04:06PM 13 OBLIGATIONS UNDER THE REGULATIONS OF A LAB DIRECTOR? AND JUST
04:06PM 14 TO SOLIDIFY THAT?

04:06PM 15 AND THE SECOND PART IS THAT IT'S NOT YOUR INTENT, AT SOME
04:06PM 16 POINT, TO ATTACK HIS PERFORMANCE, CREDIBILITY, ACTIONS OR
04:06PM 17 ANYTHING BY SUGGESTING THAT HE WAS DEFICIENT UNDER ANY OF THESE
04:06PM 18 REGULATIONS.

04:06PM 19 MR. COOPERSMITH: NOT DEFICIENT BASED ON THE
04:06PM 20 REGULATIONS, YOUR HONOR.

04:07PM 21 BUT I DO THINK IT'S IMPORTANT TO SHOW THE JURY THAT HE
04:07PM 22 UNDERSTANDS THESE OBLIGATIONS, AND THAT THEY ARE -- WHAT THE
04:07PM 23 OBLIGATIONS ARE. AND HE'S FAMILIAR WITH THIS, HE'S TESTIFIED
04:07PM 24 TO THAT.

04:07PM 25 THE COURT: RIGHT. AND SO AT SOME POINT I GUESS

04:07PM 1 DOWN THE ROAD, IS THERE GOING TO BE A QUESTION ABOUT, WELL,
04:07PM 2 LAST WEDNESDAY I SHOWED YOU THESE REGULATIONS, YOU KNEW THE
04:07PM 3 OBLIGATION, YET YOU DID THIS CONTRARY TO THE REGULATIONS?

04:07PM 4 IS THAT A SCENARIO THAT WE'RE GOING TO HAVE? AND YOU
04:07PM 5 DON'T HAVE TO ANSWER THAT IF YOU DON'T WANT TO.

04:07PM 6 I'M JUST -- YOU SEE WHAT MY CONCERN IS, THOUGH.

04:07PM 7 MR. COOPERSMITH: I DO, YOUR HONOR, AND I DON'T HAVE
04:07PM 8 THAT IN MIND.

04:07PM 9 MR. BOSTIC: YOUR HONOR -- APOLOGIES.

04:07PM 10 MR. COOPERSMITH: NO, I'M DONE.

04:07PM 11 MR. BOSTIC: ONE MORE RISK HERE BESIDES THAT,
04:07PM 12 BESIDES AN INSINUATION OR ALLEGATION OF WRONGDOING OR A
04:07PM 13 VIOLATION BY DR. ROSENDORFF, THERE'S THE DANGER THAT LOOKING AT
04:07PM 14 THE LANGUAGE OF THIS REGULATION, FOR EXAMPLE, I THINK THE
04:07PM 15 PORTION THAT MR. COOPERSMITH WILL BE MOST INTERESTED IN IS THIS
04:07PM 16 SECTION THAT SAYS "THE LABORATORY DIRECTOR IS RESPONSIBLE FOR
04:08PM 17 THE OVERALL OPERATION AND ADMINISTRATION OF THE LABORATORY."

04:08PM 18 IT THEN GOES ON TO SAY "THAT INCLUDES ACCURATELY AND
04:08PM 19 PROFICIENTLY PERFORMING TEST PROCEDURES AND RECORDING AND
04:08PM 20 REPORTING TEST RESULTS PROMPTLY."

04:08PM 21 THIS IS A CASE ALLEGING THAT THE DEFENDANT COMMITTED WIRE
04:08PM 22 FRAUD AND CONSPIRACY TO COMMIT WIRE FRAUD BY KNOWINGLY
04:08PM 23 OVERSEEING A LAB THAT PROVIDED DEFICIENT RESULTS TO PATIENTS.

04:08PM 24 HAVING THIS JURY SEE THE LAW THAT SAYS THAT A LAB DIRECTOR
04:08PM 25 IS RESPONSIBLE FOR THE ACCURACY OF THOSE TESTS HAS A REAL RISK

04:08PM 1 OF CONFUSING THEM.

04:08PM 2 I THINK WHEN JURIES SEE -- WHEN THE UNINITIATED SEE THE
04:08PM 3 LAW, WHETHER IT'S IN THE FORM OF THE REGULATION OR A STATUTE, I
04:08PM 4 THINK THEY'LL BE INCLINED TO CONCLUDE THAT THAT ANALYSIS
04:08PM 5 GOVERNS THEIR FINDINGS IN THIS CASE, WHICH IS NOT THE CASE.

04:08PM 6 THE WIRE FRAUD ALLEGATIONS DON'T -- AREN'T GOVERNED BY
04:09PM 7 THIS TEXT, AND I'M NOT SURE THAT A CURATIVE INSTRUCTION FROM
04:09PM 8 THE COURT REALLY SOLVES THAT RISK OF CONFUSION.

04:09PM 9 THE COURT: THAT WAS MY NEXT QUESTION WAS GOING TO
04:09PM 10 BE COULDN'T THAT -- AND I SHARE YOUR CONCERN, OR I RECOGNIZE
04:09PM 11 THE CONCERN -- COULDN'T THAT BE RESOLVED BY A JURY INSTRUCTION
04:09PM 12 AND/OR THE COURT NOT ALLOWING EITHER OF YOU TO ARGUE THIS
04:09PM 13 REGULATION IN REGARDS TO THE CHARGES THAT ARE FACING
04:09PM 14 MR. BALWANI?

04:09PM 15 MR. COOPERSMITH: RIGHT. YOUR HONOR, I AM NOT
04:09PM 16 SURE -- I MEAN, I GUESS I UNDERSTAND WHY MR. BOSTIC DOESN'T
04:09PM 17 WANT IT IN.

04:09PM 18 BUT I DO UNDERSTAND -- I DO BELIEVE THAT THE JURY SHOULD
04:09PM 19 UNDERSTAND WHAT DOES DR. ROSENDORFF UNDERSTAND AND WHAT DOES
04:09PM 20 THE REGULATION PROVIDE AS TO HIS OBLIGATIONS AS A LAB DIRECTOR.

04:09PM 21 AND OBVIOUSLY IF HE WANTS TO SAY, WHICH HE ALREADY HAS
04:09PM 22 SAID, THAT, "YES, BUT MR. BALWANI PREVENTED ME FROM FULFILLING
04:09PM 23 MY RESPONSIBILITY," HE CAN SAY THAT IF HE WANTS.

04:10PM 24 BUT I THINK WE HAVE TO SORT OF ESTABLISH WHAT IS THE
04:10PM 25 BASELINE OF WHAT HE'S SUPPOSED TO DO UNDER THE REG.

04:10PM 1 AND THEN THE OTHER THING THAT I JUST WANTED TO MENTION TO
04:10PM 2 THE COURT IS THAT IF I REMEMBER CORRECTLY IN THE OTHER TRIAL,
04:10PM 3 IN THE HOLMES TRIAL -- I KNOW THAT DOESN'T BIND THE COURT, BUT
04:10PM 4 AT LEAST IT'S A DATA POINT -- THAT THE DEFENSE INTRODUCED NOT
04:10PM 5 JUST THIS REGULATION, BUT THE ENTIRE BOOK OF LAB REGULATIONS.
04:10PM 6 I DON'T RECALL WHETHER THERE'S AN OBJECTION. I BELIEVE THERE
04:10PM 7 MAY NOT HAVE BEEN.

04:10PM 8 BUT IN ANY EVENT, THAT'S WHAT CAME IN.

04:10PM 9 I DON'T REMEMBER THE DEFENSE ARGUING IN THAT CASE, NOT
04:10PM 10 THAT THAT BINDS ME OR THE COURT OR ANYTHING, THE TYPE OF THINGS
04:10PM 11 THAT THE COURT IS CONCERNED ABOUT.

04:10PM 12 SO I THINK IT WAS REALLY ADMITTED FOR THE SAME PURPOSE,
04:10PM 13 AND IT MIGHT HAVE BEEN WITHOUT OBJECTION.

04:10PM 14 BUT I THINK WE'RE SEEKING TO ADMIT THE LIMITED SET OF
04:10PM 15 REGULATIONS, NOT THE ENTIRE BOOK.

04:10PM 16 THE COURT: YEAH, THAT WAS A VERY DIFFERENT
04:10PM 17 CIRCUMSTANCE. THERE WAS A DIFFERENT, I THINK, NOTICE ISSUE
04:10PM 18 REGARDING SOME OF THE PARTIES INVOLVED IN THAT CASE AT THAT
04:10PM 19 TIME, IF I RECALL CORRECTLY.

04:11PM 20 AND THE DEFENSE -- THERE WAS A LIMITATION AS TO A CERTAIN
04:11PM 21 PORTION, BUT THE DEFENSE SAID LET IT ALL IN, WE WOULD LIKE IT
04:11PM 22 ALL TO COME IN, WHICH THE GOVERNMENT DIDN'T OBJECT TO IT I
04:11PM 23 THINK AT THAT TIME.

04:11PM 24 DIFFERENT CIRCUMSTANCES.

04:11PM 25 MR. COOPERSMITH: RIGHT. JUST A DATA POINT,

04:11PM 1 YOUR HONOR.

04:11PM 2 THE COURT: RIGHT. I APPRECIATE THAT.

04:11PM 3 WELL, I DO HAVE SOME CONCERNS ABOUT HAVING IT COME IN IN
04:11PM 4 EVIDENCE.

04:11PM 5 LET ME JUST TELL YOU, I'M GOING TO SUSTAIN THE OBJECTION.
04:11PM 6 I DON'T THINK THE RELEVANCE OF THIS IS, FOR WHAT THE CHARGES
04:11PM 7 ARE HERE AND FOR THE PURPOSE THAT YOU HAVE ARTICULATED, AS WELL
04:11PM 8 AS 403, I DO THINK THERE WOULD BE PREJUDICE, UNFAIR PREJUDICE
04:11PM 9 ALLOWING THIS, AND IT WOULD CREATE CONFUSION WITH THE JURY IF
04:11PM 10 THEY WERE TO HEAR THIS, READ THIS, SEE THIS IN EVIDENCE IN THE
04:11PM 11 JURY ROOM.

04:11PM 12 WHETHER OR NOT -- SO I'M NOT GOING TO ALLOW IT TO COME
04:11PM 13 INTO EVIDENCE.

04:11PM 14 NOW, WHETHER OR NOT THEY'LL BE ABLE TO LOOK AT IT AS A
04:11PM 15 DEMONSTRATIVE, I'D LIKE YOU TO -- I'D LIKE TO TASK YOU TO THINK
04:12PM 16 ABOUT WHAT IT IS YOU WOULD LIKE TO PUT UP, OR MAYBE YOU'LL TELL
04:12PM 17 ME TODAY YOU WOULD LIKE TO PUT THE ENTIRETY OF THIS ON, OR THE
04:12PM 18 PIECES THAT SPEAK TO HIS -- THERE'S THAT FIRST PARAGRAPH THAT
04:12PM 19 MR. BOSTIC MENTIONED, AND ARE YOU GOING TO WED HIM TO HIS
04:12PM 20 RESPONSIBILITIES AND REMIND HIM, ISN'T THIS WHAT THE
04:12PM 21 REGULATIONS SAYS, ET CETERA.

04:12PM 22 MR. COOPERSMITH: RIGHT. IF I WERE PERMITTED TO PUT
04:12PM 23 THIS EXHIBIT UP AS A DEMONSTRATIVE, I THINK WHAT I WOULD DO IS
04:12PM 24 SIMPLY NOT GO OVER EVERY WORD OF IT, IT'S TOO LONG, BUT CERTAIN
04:12PM 25 PORTIONS THAT DEAL WITH THE RESPONSIBILITIES OF A LAB DIRECTOR

04:12PM 1 I WOULD HIGHLIGHT AND SAY, DO YOU UNDERSTAND THAT'S THE
04:12PM 2 REQUIREMENT?

04:12PM 3 AND HE WOULD PRESUMABLY SAY YES.

04:12PM 4 I'M NOT SURE WHY HE WOULD SAY ANYTHING ELSE.

04:12PM 5 AND THEN WE WOULD MOVE ON.

04:12PM 6 THE OTHER THING I WANTED TO MENTION, YOUR HONOR, THOUGH,
04:12PM 7 BECAUSE GIVEN THE COURT'S RULING -- AND I'M NOT SURE I'M GOING
04:12PM 8 TO DO THIS, BUT JUST TO THROW THIS OUT -- AS I SAID BEFORE, THE
04:12PM 9 GOVERNMENT ON DIRECT DID BRING OUT THROUGH THIS WITNESS, AND
04:12PM 10 ALSO THROUGH DR. PANDORI, THAT THERE WERE CERTAIN LEGAL
04:13PM 11 REQUIREMENTS FOR PROFICIENCY TESTING, AND THAT DR. ROSENDORFF
04:13PM 12 TESTIFIED THAT HE DIDN'T THINK THERANOS WAS MEETING THOSE LEGAL
04:13PM 13 REQUIREMENTS BECAUSE IT WASN'T TESTING PT ON THE PRIMARY
04:13PM 14 METHOD, WHICH HE BELIEVED AT THE TIME TO BE THE THERANOS
04:13PM 15 METHODS.

04:13PM 16 SO HAVING -- THE GOVERNMENT, HAVING DONE THAT, THERE ARE
04:13PM 17 REGULATIONS THAT DEAL WITH HOW PT IS SUPPOSED TO BE CONDUCTED.
04:13PM 18 THERE ARE OTHER MATERIALS FROM CMS, THERE ARE OTHER
04:13PM 19 AUTHORITATIVE MATERIALS.

04:13PM 20 I THINK THAT SINCE THE GOVERNMENT BROUGHT THAT INTO THE
04:13PM 21 CASE, NOW THROUGH TWO WITNESSES, IF I WANTED TO SHOW, LIKE,
04:13PM 22 WHAT THE REGULATIONS ACTUALLY REQUIRE ON THE PT TESTING AND THE
04:13PM 23 PRIMARY METHODS AND WHAT AAP IS, I FEEL LIKE THAT WOULD BE FAIR
04:13PM 24 GAME BASED ON WHAT THE GOVERNMENT DID.

04:13PM 25 AND I JUST WANT TO MAKE SURE THAT THAT IS NOT PART OF THE

04:13PM 1 EQUATION HERE WHEN WE'RE TALKING ABOUT REGULATIONS.

04:13PM 2 BUT I JUST THOUGHT I WOULD NOTE THAT.

04:13PM 3 BUT GOING BACK TO THE CMS REGULATIONS I WAS TRYING TO
04:13PM 4 ADMIT, THE LABORATORY DIRECTOR REGULATIONS, I WOULD ASK THE
04:14PM 5 COURT TO ALLOW IN THIS DEMONSTRATIVE. IF THE COURT WOULD LIKE
04:14PM 6 MORE INFORMATION ABOUT WHAT I PLAN TO PUT ON THE DEMONSTRATIVE,
04:14PM 7 IT MIGHT TAKE US THE EVENING TO DO IT, BUT WE CAN PUT IT UP ON
04:14PM 8 A SLIDE AND WE CAN BRING IT TO THE COURT'S ATTENTION EITHER
04:14PM 9 TOMORROW OR SOMETHING.

04:14PM 10 THE COURT: WELL, THAT'S WHAT I'M GOING TO ASK YOU
04:14PM 11 TO DO IS, AT A MINIMUM, WE'LL PROBABLY DISCUSS IT FRIDAY
04:14PM 12 MORNING AMONGST ALL OF THE OTHER TOPICS.

04:14PM 13 BUT BEFORE I ALLOW IT, I DO WANT TO SEE WHAT IT IS YOU
04:14PM 14 INTEND AND YOUR INTENT AND HOW YOU WISH TO USE IT, AND ALSO TO
04:14PM 15 FOLLOW UP ON HOW IT WOULD BE USED IN THE CASE, THAT IS, IN YOUR
04:14PM 16 ARGUMENT AND INSTRUCTIONS OR HOW WE'D -- HOW THAT WOULD FIT
04:14PM 17 WITH ALL OF THAT, RECOGNIZING THE CONCERNS THAT I HAVE ABOUT
04:14PM 18 THE JURY HAVING --

04:14PM 19 MR. COOPERSMITH: YES, YOUR HONOR.

04:14PM 20 THE COURT: -- THIS REGULATION.

04:14PM 21 THEY'RE NOT GOING TO HAVE IT IN EVIDENCE, AND -- BUT
04:14PM 22 YOU'VE TOLD ME YOU DON'T INTEND TO ARGUE IT IN THAT WAY, SO
04:14PM 23 I'LL TASK YOU WITH PUTTING SOMETHING TOGETHER AND I'LL LOOK AT
04:15PM 24 IT.

04:15PM 25 TO YOUR OTHER POINT ABOUT OTHER REGULATIONS, YOU KNOW, I

04:15PM 1 APPRECIATE THE WARNING ON THAT, THE NOTICE I SHOULD SAY, ON
04:15PM 2 THAT. WE'LL SEE WHAT THE FOUNDATION IS.

04:15PM 3 OF COURSE, BEFORE ANY OF THIS COMES IN, THERE HAS TO BE A
04:15PM 4 FOUNDATION LAID.

04:15PM 5 AND AS TO THOSE OTHER THINGS, YOU KNOW, THAT'S DEPENDENT
04:15PM 6 ON YOUR EXAMINATION OF THE WITNESS AND WE'LL SEE WHERE THAT
04:15PM 7 TAKES US.

04:15PM 8 MR. COOPERSMITH: YES, YOUR HONOR.

04:15PM 9 THE COURT: OKAY.

04:15PM 10 MR. COOPERSMITH: THANK YOU.

04:15PM 11 THE COURT: ANYTHING FURTHER TONIGHT?

04:15PM 12 MR. BOSTIC: NO, YOUR HONOR.

04:15PM 13 THE COURT: ALL RIGHT.

04:15PM 14 MR. COOPERSMITH: THERE IS ONE THING, YOUR HONOR.

04:15PM 15 YOU HAD ASKED US EARLIER TO CONSIDER THE STIPULATION ABOUT
04:15PM 16 THE "WIRED" ARTICLE.

04:15PM 17 THE COURT: OH, YES, RIGHT.

04:15PM 18 MR. COOPERSMITH: AND OBVIOUSLY THE JURY IS GONE AT
04:15PM 19 THE MOMENT, BUT WE WOULD REQUEST THAT THE COURT READ THE
04:15PM 20 INSTRUCTION TO THE JURY AT THIS --

04:15PM 21 THE COURT: THE STIPULATION?

04:15PM 22 MR. COOPERSMITH: I'M SORRY, THE STIPULATION, YES,
04:15PM 23 YOUR HONOR.

04:15PM 24 THE COURT: WELL, THERE IS AN INSTRUCTION THAT I
04:15PM 25 WILL READ WITH THEM. I'LL TELL THEM WHAT THE STIPULATION

04:15PM 1 MEANS.

04:15PM 2 MR. COOPERSMITH: YES, YOUR HONOR.

04:15PM 3 I THINK IT WOULD BE -- I THINK IT WOULD BE APPROPRIATE FOR
04:15PM 4 THE COURT TO TELL THE JURY THAT THIS RELATES TO DR. PANDORI'S
04:16PM 5 TESTIMONY, WHICH THEY HEARD, AND THEN READ THE STIPULATION TO
04:16PM 6 THE JURY, SOMETHING TO THAT EFFECT.

04:16PM 7 THE COURT: OKAY.

04:16PM 8 MR. BOSTIC: YOUR HONOR, I DON'T THINK IT'S
04:16PM 9 NECESSARY.

04:16PM 10 DURING DR. PANDORI'S TESTIMONY, DEFENSE COUNSEL NOTED ON
04:16PM 11 THE RECORD IN FRONT OF THE JURY THAT THE PARTIES HAD STIPULATED
04:16PM 12 TO THE PUBLICATION DATE OF THAT ARTICLE.

04:16PM 13 ALSO, ON REDIRECT THE GOVERNMENT INTRODUCED AN EMAIL
04:16PM 14 SHOWING THAT MR. BALWANI HAD BEEN SENT A COPY OF THAT ARTICLE
04:16PM 15 ON THE PUBLICATION DATE, FEBRUARY 18TH.

04:16PM 16 THE COURT: RIGHT.

04:16PM 17 MR. BOSTIC: THE PUBLICATION DATE THAT THE DEFENSE
04:16PM 18 IS TRYING TO ESTABLISH.

04:16PM 19 SO THE STIPULATION DOESN'T ACCOMPLISH ANYTHING BEYOND THAT
04:16PM 20 EXCEPT TO, I THINK, MAYBE GIVE THE JURY THE FALSE IMPRESSION
04:16PM 21 THAT SOMETHING NEEDS TO BE FIXED ABOUT WHAT HAPPENED WITH
04:16PM 22 DR. PANDORI'S TESTIMONY, WHICH I DON'T AGREE WITH.

04:16PM 23 THE COURT: RIGHT. DID YOU STIPULATE ON THE RECORD?

04:16PM 24 MR. BOSTIC: THE STIPULATION IS SIGNED, YOUR HONOR,
04:16PM 25 YES.

04:16PM 1 THE COURT: RIGHT. BUT IT WASN'T STIPULATED IN
04:16PM 2 FRONT OF THE JURY. THE JURY DIDN'T KNOW ABOUT THAT.

04:16PM 3 I RECEIVED THE STIPULATION, AND IT WAS SIGNED BY THE
04:16PM 4 PARTIES, AND THAT WAS AFTER THE CLOSE OF TESTIMONY.

04:16PM 5 MR. COOPERSMITH: RIGHT.

04:17PM 6 JUST TO BE CLEAR ON THE EVENTS, SO WE WERE CONCERNED ABOUT
04:17PM 7 QUESTIONS THAT MR. BOSTIC ASKED DR. PANDORI ABOUT WHETHER THE
04:17PM 8 "WIRED" ARTICLE IN THE EXHIBIT WAS THE SAME "WIRED" ARTICLE
04:17PM 9 THAT LED DR. PANDORI, ACCORDING TO HIS TESTIMONY, TO LEAVE THE
04:17PM 10 COMPANY.

04:17PM 11 OUR POINT WAS OBVIOUSLY THAT THIS "WIRED" ARTICLE THAT HE
04:17PM 12 WAS TALKING ABOUT IS THE STRAW THAT BROKE THE CAMEL'S BACK
04:17PM 13 ACTUALLY WAS THREE MONTHS EARLIER AND HE RECEIVED IT IN AN
04:17PM 14 EMAIL.

04:17PM 15 AND MR. BOSTIC HAD ASKED QUESTIONS DESIGNED TO SHOW THAT
04:17PM 16 DR. PANDORI -- THAT IT MIGHT NOT BE THE SAME ARTICLE, IT MIGHT
04:17PM 17 BE SOMETHING DIFFERENT.

04:17PM 18 AND IT WAS, IN FACT, THE SAME ARTICLE, BECAUSE IT TURNS
04:17PM 19 OUT THAT "WIRED" MAGAZINE PUBLISHES THEIR MATERIAL ONLINE
04:17PM 20 BEFORE THEY ACTUALLY RELEASE THE PRINT EDITION.

04:17PM 21 SO --

04:17PM 22 THE COURT: THAT WAS THE QUESTION THAT YOUR
04:17PM 23 COLLEAGUE PUT TO --

04:17PM 24 MR. COOPERSMITH: NO. THIS WAS MR. BOSTIC'S
04:17PM 25 QUESTIONS.

04:17PM 1 THE COURT: NO, NO.

04:17PM 2 WHAT I'M SAYING IS THAT YOUR COLLEAGUE ASKED THAT QUESTION
04:17PM 3 JUST AT THE CLOSE, I THINK, OF MR. PANDORI'S TESTIMONY.

04:18PM 4 I THINK IT WAS SOMETHING ABOUT, DO YOU KNOW IF "WIRED"
04:18PM 5 PUBLISHES ONLINE THEIR ARTICLES BEFORE IT'S IN PRINT?

04:18PM 6 THAT WAS THE LAST QUESTION ASKED.

04:18PM 7 MR. COOPERSMITH: RIGHT, RIGHT. THAT WAS
04:18PM 8 MR. CAZARES'S QUESTION.

04:18PM 9 THE COURT: RIGHT.

04:18PM 10 MR. COOPERSMITH: HE WAS TRYING TO DO WHAT HE
04:18PM 11 COULD AT THAT POINT ON --

04:18PM 12 THE COURT: THAT'S RIGHT.

04:18PM 13 MR. COOPERSMITH: -- ON RECROSS, I THINK IT MIGHT
04:18PM 14 HAVE BEEN, TO DEAL WITH THAT ISSUE.

04:18PM 15 THE COURT: RIGHT. AND WHETHER OR NOT THIS WITNESS,
04:18PM 16 THAT WITNESS HAD ANY FOUNDATION FOR THAT. AND HE SAID, NO, HE
04:18PM 17 HAD NO KNOWLEDGE ABOUT THAT.

04:18PM 18 MR. COOPERSMITH: HE DIDN'T KNOW ABOUT IT.

04:18PM 19 THE COURT: RIGHT. RIGHT. SO I UNDERSTAND THE
04:18PM 20 STIPULATION. I UNDERSTAND.

04:18PM 21 YOU'VE TOLD ME THAT YOU'VE SHOWED THE GOVERNMENT THAT, IN
04:18PM 22 FACT, THAT'S WHAT THEY DO.

04:18PM 23 MR. COOPERSMITH: AND, YOUR HONOR, WHAT I WAS GOING
04:18PM 24 TO DO -- JUST TO FINISH THE THOUGHT, I'M SORRY -- IS THAT WE
04:18PM 25 CONFERRED WITH MR. BOSTIC AND HIS TEAM ABOUT THE CONCERN THAT

04:18PM 1 WE HAVE WITH THE QUESTIONS, AND FORTUNATELY, IN THIS INSTANCE,
04:18PM 2 WE WERE ABLE TO RESOLVE THIS ISSUE WITH THE GOVERNMENT THROUGH
04:18PM 3 THE STIPULATION.

04:18PM 4 THE ORIGINAL STIPULATION THAT WE HAD SENT OVER TO THE
04:18PM 5 GOVERNMENT ACTUALLY HAD LANGUAGE THAT IT WOULD BE SHOWN TO THE
04:18PM 6 JURY.

04:18PM 7 THE GOVERNMENT DIDN'T WANT THAT BECAUSE I THINK THE
04:18PM 8 RESPONSE THAT I GOT, IF I REMEMBER IT, WAS, WELL, THAT'S ALWAYS
04:18PM 9 GOING TO BE THE CASE, IT COULD BE USED AS EVIDENCE, RIGHT?

04:19PM 10 SO AT THIS POINT, GIVEN THESE CIRCUMSTANCES, WHILE THE
04:19PM 11 ISSUE WAS RELATIVELY FRESH IN MIND, THE JURY SHOULD BE TOLD
04:19PM 12 ABOUT THE STIPULATION BEFORE IT GOES ON FOR MONTHS AND NOW THEY
04:19PM 13 HAVE NO IDEA WHAT THAT EVEN RELATES TO.

04:19PM 14 SO THAT'S OUR REQUEST.

04:19PM 15 THE COURT: OKAY. NO. I UNDERSTAND.

04:19PM 16 AND THE STIPULATION WAS SIGNED AFTER THE WITNESS LEFT,
04:19PM 17 AFTER HE WAS EXCUSED, IF I RECALL CORRECTLY; IS THAT RIGHT?

04:19PM 18 I THINK I RECEIVED IT AFTER HIS TESTIMONY.

04:19PM 19 MR. COOPERSMITH: YES, YOUR HONOR.

04:19PM 20 MR. BOSTIC: I THINK IT WAS SIGNED BEFOREHAND, AND
04:19PM 21 THAT'S WHAT ALLOWED THE DEFENSE TO INDICATE ON THE RECORD IN
04:19PM 22 FRONT OF THE JURY THAT THERE WAS SUCH A STIPULATION. SO THAT'S
04:19PM 23 IN THE RECORD, AND THE JURY KNOWS ABOUT IT.

04:19PM 24 IT WAS, I THINK, SUBMITTED TO THE COURT AFTER THE WITNESS
04:19PM 25 LEFT.

04:19PM 1 THE COURT: OKAY. THAT'S A PIECE I DON'T REMEMBER.

04:19PM 2 MR. COOPERSMITH: I DON'T RECALL THAT, EITHER.

04:19PM 3 THE COURT: I HAVE TO -- LET ME LOOK AT THE
04:19PM 4 TRANSCRIPT AND SEE.

04:19PM 5 THIS IS WHY I RAISE IT. I HAVE THE WRITTEN STIPULATION.
04:19PM 6 I WASN'T CERTAIN WHETHER THE JURY HAD BEEN INFORMED OF A
04:19PM 7 STIPULATION. BECAUSE TYPICALLY WHEN THERE'S A STIPULATION, THE
04:19PM 8 COURT WILL READ THE STIPULATION AND ADVISE, NOTWITHSTANDING THE
04:20PM 9 PRELIMINARY INSTRUCTIONS, WILL ADVISE THE JURY WHAT A
04:20PM 10 STIPULATION MEANS.

04:20PM 11 MR. COOPERSMITH: AND THAT'S OUR REQUEST HERE,
04:20PM 12 YOUR HONOR.

04:20PM 13 THE COURT: RIGHT.

04:20PM 14 MR. BOSTIC: AND, YOUR HONOR, JUST TO FILL OUT THE
04:20PM 15 RECORD.

04:20PM 16 THE COURT: YES.

04:20PM 17 MR. BOSTIC: THERE ARE OTHER STIPULATIONS KIND OF IN
04:20PM 18 THE PIKE AS WELL OR IN THE CHAMBER AS WELL.

04:20PM 19 THE COURT: RIGHT.

04:20PM 20 MR. BOSTIC: THERE'S STIPULATIONS REGARDING EMAIL
04:20PM 21 AUTHENTICITY, THERE IS STIPULATION FOR THE INTERSTATE ELEMENT
04:20PM 22 FOR THE WIRES. THE GOVERNMENT DOESN'T SEE ANY REASON WHY THEY
04:20PM 23 SHOULDN'T ALL BE HANDLED TOGETHER WHENEVER IT MAKES THE MOST
04:20PM 24 SENSE FOR THE FLOW OF TRIAL.

04:20PM 25 THE COURT: RIGHT. WELL, THAT MAKES SENSE, TOO.

04:20PM 1 THOSE ARE NECESSARY ELEMENTS, AND I UNDERSTAND THE PARTIES HAVE
04:20PM 2 REACHED AGREEMENT ON SOME OF THOSE THINGS.

04:20PM 3 MR. COOPERSMITH: YEAH. WE'RE JUST TRYING TO DO
04:20PM 4 WHAT WE CAN TO STREAMLINE THE TRIAL AND NOT CALL UNNECESSARY
04:20PM 5 WITNESSES, AND THAT'S THE POINT OF THAT.

04:20PM 6 THE COURT: RIGHT. EXACTLY. AND AT THE APPROPRIATE
04:20PM 7 TIME I WILL READ THOSE IN. I WILL LEAVE IT TO YOU TO TELL ME
04:20PM 8 WHEN YOU AGREE THAT TIME IS.

04:20PM 9 MR. COOPERSMITH: RIGHT. AND HERE WE'RE JUST ASKING
04:21PM 10 FOR THE SAME THING.

04:21PM 11 THE COURT: OH, WE'RE BACK TO THAT.

04:21PM 12 MR. COOPERSMITH: ALAS.

04:21PM 13 THE COURT: OKAY. NO.

04:21PM 14 WELL, AS I SAID, I'LL CHECK THE TRANSCRIPT, BUT THAT'S WHY
04:21PM 15 I RAISED IT BECAUSE I DID WANT TO -- I THINK IT'S APPROPRIATE
04:21PM 16 FOR THE COURT, THE JUDGE, TO SPEAK AT LEAST IN THIS CASE ABOUT
04:21PM 17 THE STIPULATION. AND THAT'S WHAT I'LL INTEND TO DO.

04:21PM 18 AND WE'LL DO THAT FIRST THING THEN ON FRIDAY.

04:21PM 19 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

04:21PM 20 THE COURT: AND I WILL TAKE THE BLAME FOR IT. I
04:21PM 21 FORGOT TO TELL YOU, LADIES AND GENTLEMEN, IT WAS MR. EDLIN'S
04:21PM 22 TESTIMONY OR MR. -- WHOEVER IT WAS.

04:21PM 23 MR. COOPERSMITH: I DEEPLY APPRECIATE THAT,
04:21PM 24 YOUR HONOR.

04:21PM 25 AND THE OTHER THING THE COURT HAS PENDING BEFORE IT IS

04:21PM 1 THE, ISSUE OF THE OTHER INSTRUCTION THAT WE ARGUED EARLIER.

04:21PM 2 THE COURT: RIGHT.

04:21PM 3 MR. COOPERSMITH: SO I GUESS THOSE ARE THE TWO

04:21PM 4 THINGS THAT YOU MIGHT, OR MIGHT NOT, TELL THE JURY.

04:21PM 5 THE COURT: RIGHT. OKAY.

04:21PM 6 MR. COOPERSMITH: RIGHT. THANK YOU.

04:21PM 7 THE COURT: THANK YOU.

04:21PM 8 MR. BOSTIC: THANK YOU, YOUR HONOR.

04:21PM 9 (COURT ADJOURNED AT 4:21 P.M.)

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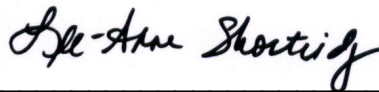
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 20, 2022